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Irish Life

ONLINE TECHNICAL GUIDE TO BUSINESS PROTECTION AND ESTATE PLANNING FROM IRISH LIFE

This is a technical guide for financial advisers only and is not intended as an advertisement.

FOREWORD

This document provides an outline of the taxation issues to be considered when you are putting together a business protection or estate planning arrangement for your clients and is based on our understanding of current legislation and Revenue practice.

In all cases we would recommend that your customers obtain professional legal and tax advice to ensure that any arrangement they put in place is appropriate to their personal and corporate circumstances.

Information is correct as at January 2016 but is subject to change.

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SECTION 1

BUSINESS PROTECTION

TYPES OF BUSINESSES, BUSINESS INSURANCE, BUSINESS TAXATION

The first thing to understand in respect of business protection is the different ways in which a business can be established. They are:

- Limited company
- Partnership
- Sole trader.

LIMITED COMPANY

Once established, a limited company is a separate legal entity to the individual(s) who set it up: the shareholders. The term 'limited' refers to the fact that shareholders' liability for company debts is limited to the value of their shareholding. So, any creditors would only generally be able to claim against the company, not against the individual shareholders.

PARTNERSHIP

A partnership is where two or more people arrange to run a business in partnership with each other and will have a legal agreement in place. The partners are jointly responsible for running the business and if it fails all partners are jointly responsible for the debt.

SOLE TRADER

A sole trader is exactly what the title states it is. It is one person who is running a business; and that individual is personally responsible for the debts of that business.

BUSINESS INSURANCE

The types of business that would require what is regarded as business insurance would typically be the limited company and the partnership. While standard life assurance policies are used for this type of protection, the way in which it is arranged is important.

Type of Business	Potential business protection need
Limited Company	Personal Shareholder Protection Corporate Shareholder Protection Key Person Cover
Partnership	Partnership Insurance
Sole Trader	Personal Cover

KEY PERSON COVER

NEED FOR KEY PERSON COVER

Key person cover is life assurance effected by an employer on the life of a key employee, who may also be a shareholder or director, to protect the company against the financial consequences of that individual's sudden death or serious illness.

Key person cover is designed to protect the value of the company's human assets in much the same way as fire insurance protects a company's physical assets.

The sudden death or serious illness of a key person could give rise to a number of immediate financial pressures for a company:

- The 'calling in' of company loans, in particular any to which the 'key person' had given a personal guarantee
- A costly interruption in business
- A loss of business contacts
- Extra resources may have to be committed to the recruitment and replacement of the key individual.

WHO IS A KEY PERSON?

A key person might be a business owner or an employee, whose sudden absence from the business would have a financial impact.

WHAT CAN THE PROCEEDS OF A KEY PERSON PLAN BE USED FOR?

The company would use these funds in any way it chooses:

- Repayment of bank loans, particularly any to which the key individual has given a personal guarantee
- Repayment of any loans the key person may have made to the company
- Recruitment of a successor
- Investment in the business.

HOW MUCH COVER IS NEEDED FOR A KEY PERSON?

The cover required is the estimated financial loss that the business would suffer plus the costs of replacing the key individual. The level of cover is normally related to either the person's salary or to the company's profitability.

In assessing the amount of cover two important factors to consider are:

1. Loan Repayment: any loans personally guaranteed by a key person or any loans made by him or her to the company.
2. Loss of profits cover: the death or serious illness of a key individual could jeopardise the trading position and profitability of the company.

In Irish Life, we would recommend, that the typical maximum cover levels should **not exceed ten times salary, or if the calculation is in relation to profit then the key person's percentage contribution to profit to a maximum of twice gross profit or 2.5 times net profit (i.e. profit after expenses but before tax).**

DO I NEED TO CONFIRM AT THE OUTSET WHAT THE COVER IS FOR?

It is recommended that a company taking out key person cover pass a board resolution recording their intention to affect key person insurance cover.

The resolution should cover the purpose for which the policy, or each policy, is being taken out.

"That the company shall effect a life assurance policy on the life of Mr/Ms X in the sum of €XXX,XXX. The purpose of this insurance is to (meet the financial loss which the company is likely to suffer) / (protect company borrowing which may be repayable) in the event of his/her death whilst in the service of the company".

This ensures:

- The correct tax treatment of the premiums
- That the key person knows that the cover is not his or her sum assured personally.

ARE PREMIUMS TAX DEDUCTIBLE?

Generally speaking key person cover premiums are not admissible deductions for corporation tax purposes. However the Revenue Commissioners have outlined the circumstances in which such premiums may qualify as admissible deductions:

a) the sole relationship is that of employer and employee,

b) the employee has no substantial proprietary interest in the business,

c) the insurance is intended to meet loss of profit resulting from the loss of the services of the employee as distinct from loss of goodwill or other capital loss, and

d) the plan is a short term insurance, providing only for a sum to be paid in the event of death.

Therefore premiums on key person cover life assurance plans that do not meet all of the above requirements are not admissible deductions for corporation tax purposes.

On this basis, key person cover life assurance premiums for plans taken out to repay loans or other outstanding debts are not admissible deductions for corporation tax purposes.

REVENUE CLARIFICATION ON TAX TREATMENT OF KEY PERSON INSURANCE POLICIES

The following is an extract from a circular issued by the Superintending Inspector of Taxes, dated July 1986, with regard to the admissibility of key person insurance premiums as an allowable deduction for corporation tax purposes.

"..the term 'Key man' may be applied to a range of policies not all of which may give rise to admissible tax deductions and the allowability or otherwise of premiums paid will be determined by reference to the terms and purposes of the policy, rather than any description which the Insurance Company may give it.

In applying the conditions (a), (b), (c), (d) '(see Section 4.2)' the following guidelines are followed:

a) "Employee" is taken as including a Director.

b) A person who, directly or indirectly, owns or is able to control more than 15% of the ordinary share capital of a company is regarded as having a substantial proprietary interest in the company.

c) The policy must be for a fixed term with no surrender value and no endowment or other investment content; it must not contain provisions whereby benefits could be paid to any person other than the employer.

d) The insurance must be related to loss of profits only and it will be necessary to satisfy the Inspector of Taxes that the contingency insured against will genuinely have an adverse effect on the employer's business.

Premiums on policies taken out to cover loans or other outstanding debts which would become repayable on the death of an employee are not admissible deductions...."

ARE THE BENEFITS TAXABLE?

This depends on the purpose of the key person insurance.

Purpose	Tax treatment
To protect a company loan	Capital receipt, exempt from capital gains tax. No tax liability arises for the company.
To replace "loss of profit" or other "revenue items" (if the profits were earned they would be subject to corporation tax) such as replacement costs	Likely to be treated as a "revenue receipt" and **subject to corporation tax.**

The Revenue clarification on the taxation of key person insurance policies says:

"While the allowability of a premium or the chargeability of a benefit are strictly separate issues, it will usually be the case that, if the premiums are allowable for tax purposes, the benefit is chargeable to tax and, if the premiums are not allowable, the benefit is not chargeable.

Therefore if it is perfectly clear from the circumstances that the sole purpose in effecting the key person insurance policy is capital in nature, i.e. to enable the company to pay off a loan in the event of the death of a key person, then the premium is clearly not deductible for tax purposes.

Therefore the proceeds of the policy payable on death or surrender would, under current Revenue practice and law, be treated for tax purposes as a capital rather than a taxable trading receipt.

Section 593 of the Taxes Consolidation Act 1997, exempts the proceeds of life assurance policies from capital gains tax, where the policy has remained in the beneficial ownership of the Company throughout its term. No tax liability on the proceeds should therefore arise under current legislation.

The above refers to the payment of policy proceeds in the event of death or disablement of a key man.

Here once the proceeds are treated as a capital as opposed to a revenue receipt for the Company the proceeds will be exempt from capital gains tax on death or disablement."

WHERE A CUSTOMER IS CONTRIBUTING TO PROFIT AND IS ALSO THE MAIN SIGNATORY ON A LOAN HOW DO I STRUCTURE THAT COVER?

Where the cover is required for two different purposes, it is recommended that two separate plans should be taken out. Where both loan cover (capital) and loss of profit cover (revenue) are required, because of the different tax treatment, you don't want the loan cover piece mistakenly to be subject to corporation tax.

WHAT DOCUMENTATION DO I NEED TO PUT A KEY PERSON PLAN IN PLACE?

Key person Cover	Irish Life Requirements	Company Requirements
The company takes out a plan on a 'key' person to provide for loss of profits / calling in of loans on his / her death or serious illness. **Life assured** **= key person** **Proposer / plan owner** **= company i.e. ABC Ltd** **Payer of premium** **= company i.e. ABC Ltd** The plan is NOT issued in trust. No trust form is required.	**Protection Application Form / Declarations and Consents** • **Declaration to Irish Life Assurance plc** – life assured is individual keyperson. He / she signs declaration as life assured –'the first person'. The company is the 'proposer'/plan owner. A company director or company secretary signs the declaration 'for and on behalf of ABC Ltd' • **Declaration under regulation 6(3) of the Life Assurance (Provision of Information) Regulations 2001** – customer is the company. A company director or company secretary signs the declaration 'for and on behalf of ABC Ltd'. This is not signed by the life assured. It is recommended that someone other than the "Keyperson" sign the application "for and on behalf of the company" as the proposer / plan owner. **Underwriting Questionnaire** - Keyperson and Business Loan Cover Questionnaire • **Key Person Cover –** if cover to protect loss of profit or replacement cost. • **Business Loan Cover** – where cover is to protect company borrowings **Anti-Money Laundering Requirements** – Please refer to your account manager	**Board Resolution** The decision to effect cover should be minuted at a board meeting of the company.
Keyperson Applications: It is recommended that someone other than the "Keyperson" sign the application "for and on behalf of the company" as the proposer / plan owner.		

WHAT IF THERE IS EXCESS MONEY FROM THE POLICY?

Where a key person arrangement is put in place and the sum assured paid from the policy is in excess of the profits to be replaced or the loan to be paid off, the original need for the policy, then any excess will be taxed depending on what that excess is used for.

If they use it to pay off a company loan then the proceeds are likely to be treated as a capital receipt for the company. So no liability to corporation tax arises for the company on that excess.

If the money is used to replace lost profits or other "revenue items", for example if the shareholder also worked in the business the money might be used to replace him or her, the excess is likely to be treated as a "revenue receipt" and subject to corporation tax.

UNDERWRITING CONSIDERATIONS – KEY PERSON INSURANCE

These are general guidelines, based on Irish Life Assurance procedures. Please check with one of our underwriters, they will be happy to advise you of requirements on specific cases.

What do underwriting need to know?

- Most importantly, what is the reason for the key person cover?
- Is it to cover:
  - Business loan?
  - Expected loss of profits?
  - Replacement and recruitment costs?
  - Investment made into the business?
  - Venture capital investment?

WHAT FINANCIAL EVIDENCE WILL BE REQUIRED?

- The financial questionnaire will provide sufficient information in majority of cases.
- The financial limits for each company will determine the level of life cover, while a questionnaire just needs to be completed by you and the customer.
- Key pieces of information to cover include:
  - Background information on company and key person's role in the business
  - Why the person is considered key to the business?
  - How has the sum assured been calculated?
  - Salary over the past three years
  - Trading figures for the business for the past three years
  - Details of and reasons for other cover in the market on the key person.

WHEN WILL THIRD PARTY FINANCIAL EVIDENCE BE REQUIRED?

- For higher sums assured the financial questionnaire may need to be countersigned by the company secretary or a director. These are are detailed on the questionnaire.
- There may also be a requirement for a copy of the last two years' company accounts on certain higher sums assured.

ARE THERE ANY GUIDELINES FOR APPROPRIATE LEVELS OF KEY PERSON COVER?

- Loss of Profits: average of the last two years' gross profit (attributable to the key person).
- Replacement Costs: 2 - 5 x income; however up to 10 x income is generally acceptable.
- Business Loan: consider up to the full amount of the new business loan.
- Investor Protection: the amount of cover should not automatically match the level of investment, in an investor protection scenario.
- The sum of cover for all key persons should not exceed these multiples.

DO THE REQUIREMENTS DIFFER WHEN APPLYING FOR KEY PERSON COVER ON AN EXISTING UNSECURED LOAN?

- Yes, it is important to realise that a more detailed financial summary may be required.
- Clear explanation as to why the cover is being put in place now?
- Up-to-date details of the existing loan
- Reason for loan
- Current balance outstanding
- Term remaining
- Repayment history.
- An overall financial profile with clear reasoning as to why the cover is being put in place now will deliver the best results.
- Talk to an underwriter in advance of submitting the application.

WHEN WOULD YOU CONSIDER A TERM BEYOND TEN YEARS OR COVER WITH A CONVERSION OPTION?

- In a family run or small business, the key person(s) may have longer term commitments to the business.
- A business loan may be for longer than ten years, and the loan offer specifies cover to be in place on a key person(s).
- In both scenarios there is a justification either for a term beyond ten years, or shorter term cover with a conversion option.

WHAT IF THERE HAVE BEEN RECENT LOSSES IN THE BUSINESS?

- This does not automatically mean that we will not offer cover.
- Clear understanding as to the reasons for the cover now are very important.
- Provide a clear explanation as to the reasons for the financial loss in that year.
- A copy of the last two years' accounts would be helpful in these circumstances.
- Also recent trading figures, if business has returned to profit since last set of audited accounts.

WHAT IF THE KEY PERSON COVER INVOLVES A START-UP COMPANY?

- Background information (CV perhaps) on the customer's key skills would be very helpful
- Clear explanation as to how the sum assured has been calculated
- If there has been investment into the company, a copy of the investor agreement would be very helpful
- Summary of the business plan if available.

HERE ARE SOME MORE USEFUL LINKS:

Advisers guide to keyperson cover

Sample Broker Factfind

Keyperson/business loan cover questionnaire

Advisers Quick Guide to Business Protection

Client Quick Guide to Business Protection

Company proposed business

Documentation required to place business protection

WHAT IS SHAREHOLDER PROTECTION?

Shareholder protection is life assurance that is taken out to protect both business owners and their families in the event of the death of one of the business owners.

Life cover is effected on the shareholders. The proceeds of this life cover are intended to enable the surviving owners to buy back the share of a business that belonged to the deceased shareholder. This enables the surviving shareholders to retain control of the business. An agreement is put in place to ensure that this is what happens.

WHY IS THERE A NEED FOR SHAREHOLDER PROTECTION?

The sudden death of a shareholder in a private limited company can cause problems for both the surviving shareholders and the deceased's next of kin.

For the surviving shareholders the problems that can arise are:

LOSS OF CONTROL

If the deceased owned more than 50% of the company the other shareholders would now find themselves having to work with a new controlling shareholder, possibly the deceased's spouse or one of his or her children. There could be disagreements about how the business should be run, particularly if the new shareholder has no experience of the business.

REFUSAL TO SELL

The ideal outcome for the surviving shareholders may be to buy back the deceased's shareholding from his or her next of kin. But what happens if they refuse to sell?

LACK OF LIQUID CAPITAL

Even if the deceased's next of kin are willing to sell the surviving shareholders simply may not have sufficient liquid capital to buy the shares from them.

The surviving shareholders could borrow the necessary funds but they would then be faced with the burden of loan repayments for years to come.

SHARES PASS TO OUTSIDE PARTY

If the deceased's next of kin want to sell and the other shareholders are financially unable to buy then the deceased's next of kin may have to sell the shares to an outside third party, possibly a competitor or someone totally inexperienced in the business.

For the deceased shareholder's next of kin the problems that can arise are:

AN ILLIQUID ASSET

If the shares are not sold the next of kin may be left holding a 'paper asset' producing little or no income. The position could be even more serious if the shares also give rise to an immediate inheritance tax liability for the dependants.

NO READY MARKET FOR SHARES

The company's Articles of Association may give the other shareholders the right to block the sale of the shares to any outside party. The next of kin could therefore be forced into a 'fire sale' of the shares to the other shareholders at a low price in the absence of any other realistic offer for the shares.

A SOLUTION

Life assurance protection can provide a solution to the problems outlined above by providing liquid capital on the death of a shareholder to enable

- the deceased's shares to be bought back from his estate or next of kin, and
- the surviving shareholders to maintain ownership and control of the business going forward.

HOW IS SHAREHOLDER PROTECTION SET UP?

There are two ways to set up shareholder protection. The cover can be paid for personally by the shareholders: personal shareholder protection; or it can be paid for by the company: corporate shareholder protection.

The benefits of both the personal and corporate shareholder arrangements are the same:

- On a death the surviving shareholders retain control of the company
- The dependants of a deceased shareholder can realise their shares for cash shortly after death.

Each company's individual circumstances will determine which option, either personal or corporate shareholder protection, meets their needs, but whichever route you chose, all it's really about is putting life cover in place to ensure that the necessary funds will end up in the right hands at the right time, in both a cost efficient and a tax efficient manner.

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The shareholders enter into a personal agreement with each other to buy out a deceased shareholder's shares in the event of his death.

Each shareholder personally effects life assurance cover, which is payable to the surviving shareholders on his death.

The surviving shareholders can then use the proceeds of the life assurance policy to buy out the deceased's next of kin in line with the agreement.

The 'personal' arrangement is relatively simple to arrange and the legal and taxation issues are more straightforward.

The main drawback of this solution is that the cost of the arrangement is borne personally by the individual shareholders out of after tax income. If the company funds a 'personal' arrangement, the cost is treated as a benefit in kind for each shareholder.

HOW DO I SET UP PERSONAL SHAREHOLDER PROTECTION?

There are two steps involved.

1. A shareholders' legal agreement, and
2. Life insurance plans must be effected on the shareholders.

SHAREHOLDERS' LEGAL AGREEMENT

With regard to the shareholders' legal agreement, this is usually a double option agreement. This means that it can be enforced by either party. It provides that, in the event of the death of a shareholder, either the surviving shareholders can exercise an option to compel the deceased's personal representatives to sell the shares to them at market value, or the deceased's personal representatives can compel the shareholders to buy the shares back at market value.

Some protection providers can provide draft agreements but it is recommended that the company shareholders consult their legal and tax advisers to draw up an agreement suitable to their particular circumstances.

STRUCTURING THE LIFE INSURANCE

There are two possible ways to set this up for personal shareholder protection. The method chosen will depend on the company's circumstances.

1. LIFE OF ANOTHER

- Each shareholder covered by the agreement effects life cover under a protection plan on the life of each of the other shareholders, for a sum assured equal to the estimated current value of their shareholding.
- Example: owners A and B share a business equally. A effects a plan (as proposer) on B's life for a sum assured equal to half the value of the business, and vice versa.
- The proposer / owner of each policy will pay the premium on the plan.
- The proceeds of the plan are, under current legislation, free from personal tax in the hands of the plan owner provided they have paid the premiumthe plan owner has paid the premium.
- This method can be cumbersome where there are more than two or three shareholders and can be inflexible if circumstances change, i.e. if a shareholder leaves the company.

2. OWN LIFE IN TRUST

- Each shareholder covered by the agreement effects a life assurance protection plan on their own life for a sum assured equal to the estimated current value of their share of the company.
- Each policy is written under trust for the benefit of the other shareholders covered by the legal agreement.
- Example: owners A, B and C have different sized shareholdings in a business. Each of them takes out a plan on his own life for the value of his own shareholding, in trust, for the benefit of "the surviving owners of ABC Ltd".
- Each shareholder pays the premium on his own plan.
- The 'own life in trust' method is flexible, in that the beneficiaries can be changed if the business protection agreement ceases or if a shareholder leaves the business.
- The plan proceeds will be exempt from tax in the hands of the surviving shareholders provided certain Revenue conditions are met.

TAXATION OF PLAN PROCEEDS – LIFE OF ANOTHER

CAPITAL GAINS TAX

The proceeds of the shareholder protection insurance plan payable on death or disablement are not liable to capital gains tax under current legislation.

INHERITANCE TAX

On death the proceeds of the plan are paid to the plan owner where the arrangement has been made on a 'life of another' basis. There is currently no inheritance tax liability for the surviving shareholder provided he has paid the premium for the benefit he will receive.

TAXATION OF PLAN PROCEEDS – OWN LIFE IN TRUST

CAPITAL GAINS TAX

The proceeds of the shareholder protection insurance plan payable on death or disablement are not liable to capital gains tax under current legislation.

INHERITANCE TAX

On death the proceeds of the plan are paid to the trustee(s) of the policy for the benefit of the surviving shareholders who are party to the arrangement.

The Revenue Commissioners have clarified that the proceeds of such a plan are exempt from inheritance tax in the hands of the surviving shareholders in certain circumstances, to the extent that they use the proceeds to purchase the deceased's shareholding.

SALE OF SHARES BY PERSONAL REPRESENTATIVES

The proceeds from the disposal of shares would be liable to capital gains tax in the hands of the personal representatives of the deceased. However, a liability to tax would only arise on any increase in the value of the shares from the date of death to the date of sale and as such is likely to be small.

It is important to remember that the value received for the shares could give rise to an inheritance tax liability for the deceased's family.

POSITION OF SURVIVING SHAREHOLDERS

Following the buy back, the total number of shares held by the survivor, and hence the total value of his shareholding, will increase. On a subsequent sale of shares by the survivor it is this increased value that will apply for the purposes of capital gains tax on such a disposal. Any chargeable gain arising will of course be reduced by the consideration paid for the shares at the time of death.

WHAT IF THERE IS EXCESS MONEY FROM THE POLICY OVER THE VALUE OF THE DECEASED'S SHAREHOLDING?

How the excess is treated depends on whether the arrangement is set up as an 'own life in trust' arrangement or a 'life of another' arrangement.

Where a 'life of another' arrangement is used, because the plan owner paid the premium for the 'benefit' he/she received, the proceeds are completely tax free in his/her hands.

Where an 'own life in trust' arrangement is used, in line with the Revenue clarification, any surplus arising on the death of a shareholder will be liable to inheritance tax in the hands of the surviving shareholders who are beneficiaries of the life assurance policy.

See Appendix I for Sample Irish Life Agreements and Trust Forms.

1. Sample Personal Shareholder Legal Agreement

2. Sample Personal Shareholder Trust Form

Corporate shareholder protection is an arrangement between a private trading company and one or more of its shareholders whereby:

- The company enters into a legal agreement with a shareholder to buy back his shares from his personal representatives on death,

and

- The company effects a life assurance plan on each shareholder covered by such an agreement to provide funds on death to enable the company to complete the buy back. The company pays the premiums on each plan

HOW DO I SET UP CORPORATE SHAREHOLDER PROTECTION?

There are two steps:

- The legal agreement.
- The life assurance plans.

THE LEGAL AGREEMENT

With regard to the legal agreement there are three steps:

1. **Check the company's Constitution** to see if they allow the company to buy back its own shares. Amend them if necessary in order to proceed.

2. **Prepare the put/call option agreement** according to the company's particular circumstances.

3. **Have a meeting of the board** to approve the entering into of the agreements by the company and the shareholders.

1. CHECK CONSTITUTION

Power of a company to buy back its own shares

Before the company enters into a legal agreement to purchase the shares of a deceased shareholder, it needs to check its Constitution to ensure it is allowed to do this.

If the company's Constitution do not currently authorise the company to purchase its own shares then an amendment will be needed to include a provision authorising the company to purchase its own shares in accordance with the provisions of Part 3 Chapter 4 of the Companies Act 2014.

A special resolution of the members of the company may be necessary to amend its Constitution.

2. PREPARE PUT/CALL OPTION AGREEMENT

Once the Constitution have been amended, the company, in conjunction with its own legal and taxation advisers, then prepares a put/call option agreement suitable to its own particular circumstances. A separate agreement is required in respect of each shareholder whose shares are to be bought back on death.

On the death of a shareholder covered by such an agreement:

- The company can exercise a 'call' option to compel the deceased's personal representatives to sell the shares back to it at market value,

or

- The deceased's personal representatives can exercise a 'put' option to compel the company to buy the shares back from them at market value.

While Irish Life can provide you with a sample draft agreement it is recommended that the company and its shareholders should consult with its own legal and taxation advisers before drawing up an agreement appropriate to their own particular circumstances.

3. A MEETING OF THE COMPANY TO AUTHORISE THE PUT/CALL OPTION AGREEMENT

The authorisation for the company to enter each Agreement may need to be approved by a special resolution of the company. Section 105 of the Companies Act 2014 contains specific requirements in relation to the passing of a resolution in relation to the acquisition by a company of its own shares and should be consulted before the acquisition proceeds. Under section 105 (5) of the Companies Act 2014 the special resolution will be ineffective if a member holding shares affected by the resolution exercises his voting rights in respect of the shares in favour of the resolution and it would not have been carried without his vote. Therefore to pass such a resolution in such circumstances, that shareholder would need to absent himself from that meeting, and allow the other shareholders to vote through the special resolution with regard to his/her shareholding.

APPENDIX [II] - COMPANIES ACT 2014

Part 3, Chapter 6 of the Companies Act 2014 allows a company to buy back its own shares in certain circumstances and subject to certain conditions. The information below is a summary only of the provisions of Part 3, Chapter 6 of the Companies Act 2014 and we recommend that you take appropriate legal advice before you proceed.

KEY PROVISIONS OF PART 3, CHAPTER 6 OF THE COMPANIES ACT 2014

- A company can only acquire its own shares 'out of profits available for distribution', or in certain cases, from the proceeds of a fresh issue of shares made for the purposes of the acquisition;
- The company must be authorised to acquire its own shares by-
  - the Company's constitution;
  - the rights attaching to the shares in question; or
  - a special resolution of the Company.
- A company cannot buy back all its own shares;
- A company can buy back its own shares under a contingent purchase contract, provided the contract has been authorised by a special resolution (e.g. a Put and Call Option Agreement under which the company could exercise a Put option on the death of a shareholder to buy back his shares would be considered to be a contingent purchase contract, the contingency being the death of the shareholder.); and
- Where a purchase of shares is proposed to be authorised by way of special resolution, the following provisions apply;
  - the proposed purchase contract must be made available to any members who request it or alternatively made

- available for inspection by the members at the registered office of the Company from the date of the notice of the meeting at which the resolution to purchase the shares is proposed to be approved, and at the meeting itself;
- under section 105(5) of the Companies Act 2014 the special resolution will be ineffective if a member holding shares affected by the resolution exercises his voting rights in respect of the shares in favour of the resolution and it would not have been carried without his vote; and
- the terms of such a contract to purchase its own shares may only be subsequently varied revoked, or renewed by a further special resolution.

STRUCTURING THE LIFE ASSURANCE

- To put itself in funds to meet its potential obligations under the legal agreement, the company proposes for a protection plan on the life of each shareholder to be covered by such an agreement.
- The sum assured would normally be equal to the estimated market value of that individual's shareholding.
- The decision to propose for these plans would normally be minuted at a board meeting of the company, specifying the reason for effecting the plan, i.e. to buy back a shareholder's shares on death.

THE BENEFITS OF THIS ARRANGEMENT FOR THE SHAREHOLDERS ARE AS FOLLOWS:

- On a death the surviving shareholders retain control of the company, as the deceased's shares are bought back by the company and cancelled.
- The dependants of a deceased shareholder can realise their shares for cash shortly after death.
- The cost of the life assurance plans is borne totally by the company, and not by the shareholders personally.

WHAT ARE THE TAXATION IMPLICATIONS OF CORPORATE SHAREHOLDER PROTECTION?

TAXATION OF ARRANGEMENT

The life assurance plans are issued to the company who pays the premiums.

Under current legislation and Revenue practice it is the authors' opinion that the premiums would not be tax deductible for corporation tax purposes, while the proceeds are likely to be exempt from corporation tax.

TAXATION OF PLAN PROCEEDS

The purpose for which the plan is taken out, whether to cover a 'capital' or 'revenue' type loss, is the main consideration in establishing whether or not the proceeds will be taxed.

If the plan is part of a corporate share buy back arrangement then the proceeds are likely to be treated as a capital receipt for the company. The proceeds of a company owned plan, paid out on death or disablement, are exempt from capital gains tax. So no tax liability arises for the company on the proceeds of the life assurance plan.

TAX DEDUCTION FOR PREMIUMS

Generally speaking key person insurance premiums are not admissible deductions for corporation tax purposes. However the Revenue Commissioners have outlined the circumstances in which such premiums may qualify as admissible deductions:

a) the sole relationship is that of employer and employee,

b) the employee has no substantial proprietary interest in the business,

c) the insurance is intended to meet loss of profit resulting from the loss of the services of the employee as distinct from loss of goodwill or other capital loss, and

d) the plan is a short term insurance, providing only for a sum to be paid in the event of death.

Therefore premiums on key person insurance plans which do not meet all of the above requirements are not admissible deductions for corporation tax purposes.

On this basis, corporate shareholder insurance premiums for plans taken out as part of a shareholder protection arrangement are not admissible deductions for corporation tax purposes.

Premiums

Premiums paid by the company on corporate co-director's insurance will, under current Revenue practice, not be an allowable deduction for corporation tax purposes.

Revenue clarification on the taxation of key man insurance* policies, issued in July 1986, require four separate conditions to be met in order for premiums to be an admissible deduction for corporation tax purposes:

(i) The relationship between the company and the insured life is that of employer and employee. The term 'employee' in this context is taken as including a director.

(ii) The employee must have no substantial proprietary interest in the business. A person is regarded as having a substantial proprietary interest in a company if he has more than 15% of the ordinary share capital.

(iii) The life assurance is intended to meet loss of profit resulting from the loss of the services of the employee as distinct from loss of goodwill or other capital loss. Premiums on policies taken out to cover loans or other outstanding debts which would become repayable on the death of an employee are not admissible deductions.

(iv) The life policy must be for a fixed short term, usually less than five years, and have no surrender value or investment content.

*The term 'key man' in the Revenue's clarification is taken as applying to a wide range of policies, where an employer takes out 'in his own favour' a policy insuring against death, sickness, or injury of an employee.

In this context life assurance policies effected by a company as part of a corporate co-director's insurance arrangement can be taken as 'key man' policies.

In the case of premiums paid by a company as part of a corporate co-director's insurance it is likely that requirements (ii) and (iii) will not be met in most cases and hence the premiums will not be admissible deductions for corporation tax purposes.

TAXATION OF THE SALE OF SHARES BACK TO THE COMPANY BY PERSONAL REPRESENTATIVES - CAPITAL GAINS TAX TREATMENT

In certain circumstances, where a company buys back its own shares, any amount paid by the company in excess of the original issue price is treated as a 'distribution' rather than a capital gain.

The implications of this treatment with regard to a company purchasing its own shares would be that:

- **The vendor of the shares would be liable to income tax under Schedule F on the amount of the distribution plus attaching tax credit.**
- **The company would be obliged to pay advance corporation tax (ACT) to the Revenue on the payment.**

This income tax treatment would obviously make the purchase of shares by the company unattractive to most vendors.

However, provided certain conditions are met, for income tax purposes the sale of shares in an unquoted trading company back to that company can be treated as a disposal by the seller and subject to capital gains tax treatment, rather than as a distribution received from the company.

It is important that all parties are satisfied, before the put/call option agreement is entered into, that the sale of the shares by a deceased shareholder's personal representatives back to the company under the agreement is likely to qualify for capital gains tax treatment under Section 61, Finance Act 1991. This will involve checking that all seven conditions are likely to apply.

If capital gains tax (CGT) treatment does apply on the sale of shares to the company by a deceased shareholder's personal representatives, then any CGT liability would only arise in respect of any increase in value of the shares from the date of death to the date of sale.

As this period is unlikely to be more than a few months in most cases, with the time frame set out in the put/call agreement, no material capital gains tax liability is likely to arise in such circumstances.

It is important to remember that the value received for the shares could give rise to an inheritance tax liability for the deceased's family.

Section 176 of the Tax Consolidation Act 1997 provides that the purchase by an unquoted trading company of its own shares will not be treated as a distribution, subject to certain requirements being fulfilled. In this case the sale of the shares by the vendor to the company would instead be treated as a disposal for capital gains tax purposes.

The vendor must meet seven separate requirements to obtain the capital gains tax treatment on the sale of his/her shares to the company.

These can be summarised as follows:

(1) The company must be an unquoted (not publicly traded) trading company.

(2) The purchase of the shares by the company must be for the benefit of the trade.

(3) The purchase of the shares by the company must not be part of any scheme to enable the shareholders to benefit from the profits of the company without taking a dividend.

(4) The vendor of the shares must be resident and ordinarily resident in the State for the year when the shares are purchased. As of July 2014, the following rules apply in relation to residency.

a. A person is resident for tax purposes in Ireland if they spend (a) 183 days in Ireland or (b) 280 days over two years i.e. current and preceding tax year, with a minimum of 30 days in each year. A day for residence purposes is one on which the person is in Ireland at any time in a day.

b. The term ordinarily resident as distinct from resident refers to an individual's pattern of residence over a number of years. If you come to Ireland for the first time and remain resident for three consecutive tax years, you will become ordinarily resident from the beginning of the fourth tax year.

(5) The shares must be owned by the vendor for at least five years before the shares are purchased, or three years if the shares are being purchased on death. If the company is a relatively new company, less than three years old, then the pay-out by the company in respect of the shares may be treated as a distribution and therefore subject to income tax. The directors may be advised to proceed down the personal route in this case.

(6) The vendor and his/her associates - i.e. spouse or civil partner and children under 18 living with their parents - must reduce their shareholding by at least 25% as a result of the purchase.

(7) The vendor and his/her associates combined must have less than 30% of the equity of the company after the purchase.

All tests must be met to qulaify for capital gains tax treatment

POSITION OF SURVIVING SHAREHOLDERS

Following the buy back, the shares bought by the company are cancelled. Thus, the number of shares held by the survivors will not increase, but their percentage ownership of the company will.

On a subsequent sale of shares by any of the survivors, it is this increased value that will apply for the purposes of capital gains tax on such a disposal. However, as the buy back of the shares was funded by the company and not the shareholders personally, any chargeable gain will not be reduced by the amount paid for the shares by the company at the time of the buy back.

Below is a quick comparison of both arrangements that may assist you.

	Personal Shareholder Protection	Corporate Shareholder Protection
Premiums paid by	The shareholder personally	The company
Plan owned / proceeds payable to	The shareholder personally / the trustee of the life assurance plan	The company
Suitable for 'young' start-up companies?	Yes	No – 7 rules for capital gains tax treatment on sale of shares back to the company
Suitable for Investment Companies?	Yes	No – 7 rules for capital gains tax treatment on the sale of shares back to the company
Suitable where non resident	Yes	No – 7 rules for capital gains tax treatment on the sale of shares back to the company
Suitable if all shareholders not participating?	Only shareholders who participate can benefit	Company can effect such cover on just one of its shareholders

WHAT IF THERE IS EXCESS MONEY FROM THE POLICY OVER THE VALUE OF THE DECEASED'S SHAREHOLDING?

Where the sum assured from the life assurance policy is greater than the value of the deceased's share in the business any excess over the amount paid to the next of kin goes back into the company. How this excess is taxed will depend on what the company uses it for.

If they use it to pay off a company loan then the proceeds are likely to be treated as a capital receipt for the company. So no liability to corporation tax arises for the company.

If the money is used to replace lost profits or other "revenue items", for example if the shareholder also worked in the business the money might be used to replace him or her, the excess is likely to be treated as a "revenue receipt" and subject to corporation tax.

WHAT DOCUMENTATION DO I NEED TO SET UP SHAREHOLDER PROTECTION?

This is for illustration purposes only. You should check requirements Irish Life underwriting department on 01 7041888.

Corporate Shareholder Protection	Irish Life Requirements	Company Requirements
The company takes out an individual protection plan on the shareholder and the company pays the premium.. **Life assured = shareholder** **Proposer / plan owner = company i.e. ABC Ltd** **Payer of premium = company i.e. ABC Ltd** The plan is NOT issued in trust. No trust form is required.	**Protection Application Form / Declarations and Consents** • **Declaration to Irish Life Assurance plc** – life assured is individual shareholder. He / she signs declaration as life assured –'the first person'. The company is the 'proposer'/plan owner. A company director or company secretary signs the declaration 'for and on behalf of ABC Ltd' • **Declaration under regulation 6(3) of the Life Assurance (Provision of Information) Regulations 2001** – customer is the company. A company director or company secretary signs the declaration 'for and on behalf of ABC Ltd'. This is not signed by the life assured. **Underwriting Questionnaire** - Partnership Share Purchase Corporate Co Directors Cover Financial Questionnaire **Anti-Money Laundering Requirements** – Please refer to your account manager	1. **Company Law - Check Company's Articles of Association** – the company must be authorised to buy back its shares in its articles of association, so the articles may need to be changed. A special resolution is required to change the company's articles 2. **Confirm Capital Gains Tax Treatment** – is likely to apply to the proceeds from the sale of shares back to the company 3. **Corporate Share Purchase Agreement** – a separate "Put and Call" agreement must be prepared and completed between the company and each shareholder involved. *This 'sample' draft agreement is available on www.bline.ie* 4. **Pass a Special Resolution** - to authorise the company to enter into the share purchase contract with each shareholder. The special resolutions must be passed before each agreement can be signed.

Corporate Shareholder Protection: It is recommended that someone other than the "Life Assured" in each case should sign each of the applications "for and on behalf of the company" as the proposer / plan owner.

SHAREHOLDER AND PARTNERSHIP PROTECTION: Where share purchase cover or partnership cover is being put in place, it is very important that the clients own legal advisor should advise on the suitability of our draft agreements for the clients own particular circumstances. In particular to ensure that any agreements are not in conflict with the company's articles of association or the firms partnership agreement.

Personal Shareholder Protection	Irish Life Requirements	Company Requirements
OPTION 1 - Own Life in Trust		
The plan is put in trust for the 'other shareholders in the business' using a special shareholders trust form. **Life assured = shareholder personally** **Proposer / plan owner = shareholder personally** **Payer of premium = shareholder personally**	**Protection Application Form / Declarations and Consents** • **Declaration to Irish Life Assurance plc** – life assured is individual shareholder, he / she signs the declaration personally, <u>no separate proposer.</u> • **Declaration under regulation 6(3) of the Life Assurance (Provision of Information) Regulations 2001** – customer is individual shareholder, he / she signs the declaration personally. No separate proposer. **Shareholder Trust Form** - shareholder is settlor and trustee. He / she signs the trust form personally. The form must be signed and dated before the plan is issued. The beneficiaries are the 'other shareholders in the business named ABC Ltd'. **Underwriting Questionnaire** - Partnership Share Purchase Corporate Co Directors Cover Financial Questionnaire **Anti-Money Laundering Requirements** – Please refer to your account manager	**Shareholder Buy / Sell Double Option Agreement** – <u>one single agreement which is to be signed by all the participating shareholders.</u> *This draft agreement is available on www.bline.ie*
OPTION 2 - Life of Another		
A plan is required on the life of each individual shareholder. The proposer / plan owner in each case is the 'other shareholders of the business. The proposer pays the premium personally. **Life assured = shareholder personally** **Proposer / plan owner = other shareholders in the business** **Payer of premium = other shareholders in the business (the proposers)** The plan is NOT issued in trust. No trust form is required.	**Protection Application Form / Declarations and Consents** • **Declaration to Irish Life Assurance plc** – the shareholder who is the life assured signs the declaration personally as the 'first person'. The other shareholders are the proposers of the plan and sign as separate proposer / plan owner. • **Declaration under regulation 6(3) of the Life Assurance (Provision of Information) Regulations 2001** – customer is the 'other' shareholders; they sign the declaration personally as a separate proposer. This is not signed by the life assured. **Underwriting Questionnaire** - Partnership Share Purchase Corporate Co Directors Cover Financial Questionnaire **Anti-Money Laundering Requirements** – Please refer to your account manager	**Shareholder Buy / Sell Double Option Agreement** – <u>one single agreement which is to be signed by all the participating shareholders.</u> *This draft agreement is available on www.bline.ie*

SEE APPENDIX II FOR THE FOLLOWING:
IRISH LIFE SAMPLE SHAREHOLDER LEGAL AGREEMENT

Some Useful links:

Advisers Quick Guide to Business Protection

Passing On Business Assets

Client Quick Guide to Business Protection

Personal Shareholders Legal Agreement

Company investments in life assurance savings and investments plans

Company Proposed Business

Personal Shareholder Trust Form

Corporate Shareholder Legal Agreement

Retirement Relief from CGT

Shareholder Protection - An Advisers Guide

Corporate Shareholder tax treatment on sale of shares to a company

You and Your Business Booklet

Documentation required to place business protection

Sample Broker Factfind

Keyperson Cover An Advisers Guide

Money Laundering - New Business requirements

PARTNERSHIP INSURANCE

NEED FOR PARTNERSHIP INSURANCE

A number of problems can arise for a partnership upon the death of one of the partners.

For the **surviving partners** the problems that can arise are:

The partners may be legally bound, either under their own partnership agreement or under the Partnership Act 1890, to pay an immediate capital sum to the deceased partner's estate in respect of:

- The deceased partner's share of undrawn profits for the year in which he/she died.
- The deceased partner's share of any partnership fixed assets, such as the office building.
- The balance of his/her capital or loan account.
- A payment in respect of the deceased partner's share of partnership goodwill.

The partners could, therefore, be faced with the prospect of finding an immediate capital sum to meet their obligations to the deceased partner's next of kin.

If they do not have sufficient liquid capital available, the surviving partners might have to borrow the necessary funds, but they would then be faced with the prospect of loan repayments for years to come.

If borrowing is not a realistic option at the time the partners might be forced to pay a pension to the deceased partner's dependants. This would also be a long term financial drain on the partnership.

For the **next of kin** the problems are:

The surviving partners may not be able to find the necessary capital immediately. In addition, some partnership agreements allow surviving partners to spread payments to a deceased partner's estate over a number of years, up to ten years in some cases, which may not be suitable to their needs. The problem is compounded by the fact that the next of kin cannot sell their partnership share to any other third party. They must therefore wait for payment from the surviving partners.

HOW DO I SET UP PARTNERSHIP INSURANCE?

A solution to the above problems is partnership insurance. It is arranged in two steps:

1. Partnership legal agreement

2. Life assurance

PARTNERSHIP LEGAL AGREEMENT

Most partnerships have a written partnership agreement covering the conduct of the business, and the rights and obligations of each partner. This agreement should ideally outline the precise entitlement of each partner's estate in the event of a partner's death.

LIFE ASSURANCE

The agreement would also normally include an obligation on each partner to effect a life assurance plan on his / her own life for the benefit of the other partners. This is to provide the necessary funds on death to enable them to make an immediate payment to his / her estate.

The life assurance may be arranged in one of two ways:

A) LIFE OF ANOTHER

Each partner covered by the agreement effects a protection plan on the life of the other partner/s. The cover on the policy should be equal to the estimated current value of the life assured's share of the partnership.

The owner of each plan will pay the premium on the plan.

- Example: Owners A and B share a business equally. A effects a plan (as proposer) on B's life for a sum assured equal to half the value of the business, and vice versa.

The proceeds of the plan are, under current legislation, free from personal tax in the hands of the plan owner provided he/she has paid the premium. This method can be cumbersome where there are more than two or three partners and can be inflexible if circumstances change, i.e. if a partner leaves the company.

B) OWN LIFE IN TRUST

Each partner covered by the agreement effects a protection plan on their own life for a sum assured equal to the estimated current value of their share of the partnership. Each plan is written under trust for the benefit of the other partners covered by the agreement.

Each partner pays the premium on his / her own plan.

The 'own life in trust' method is flexible, in that the beneficiaries can be changed if the business protection agreement ceases. The plan proceeds will be exempt from tax in the hands of the surviving partners provided certain Revenue conditions are met.

The correct approach will depend on each partnership's particular circumstances.

WHAT ARE THE BENEFITS OF PARTNERSHIP INSURANCE?

- Survivors have funds to buy the deceased's share in the firm without having to resort to borrowing or selling assets
- Survivors retain control of the business
- The dependants of a deceased partner are financially compensated.

WHAT DOCUMENTATION IS NEEDED TO EFFECT A PARTNERSHIP INSURANCE ARRANGEMENT?

This guideline is for illustration purposes only.

Partnership Insurance	Irish Life Requirements	Company Requirements
OPTION 1 - Own Life in Trust		
The plan is put in trust for the 'other shareholders in the business' using a special shareholders trust form. **Life assured = partner personally** **Proposer / plan owner = partner personally** **Payer of premium = partner personally**	**Protection Application Form / Declarations and Consents** • **Declaration to Irish Life Assurance plc** – life assured is individual partner, he / she signs the declaration personally, no separate proposer. • **Declaration under regulation 6(3) of the Life Assurance (Provision of Information) Regulations 2001** – customer is individual partner, he / she signs the declaration personally. No separate proposer. **Partner Trust Form** - partner is settlor and trustee. He / she signs the trust form personally. The form must be signed and dated before the plan is issued. The beneficiaries are the 'other shareholders in the firm named ABC'. **Underwriting Questionnaire** - Partnership Share Purchase Corporate Co Directors Cover Financial Questionnaire **Anti-Money Laundering Requirements** – Please refer to your account manager	**Partnership Buy / Sell Double Option Agreement** – one single agreement which is to be signed by all the participating partners. *This draft agreement is available on www.bline.ie*
OPTION 2 - Life of Another		
A plan is required on the life of each individual partner. The proposer / plan owner in each case is the 'other partners of the firm. The proposer pays the premium personally. **Life assured = partner personally** **Proposer / plan owner = other partners in the firm** **Payer of premium = other partners in the firm (the proposers)** The plan is NOT issued in trust. No trust form is required.	**Protection Application Form / Declarations and Consents** • **Declaration to Irish Life Assurance plc** – the partner who is the life assured signs the declaration personally as the 'first person'. The other partners are the proposers of the plan and sign as separate proposer / plan owner. • **Declaration under regulation 6(3) of the Life Assurance (Provision of Information) Regulations 2001** – customer is the 'other' partners; they sign the declaration personally as a separate proposer. This is not signed by the life assured. **Underwriting Questionnaire** - Partnership Share Purchase Corporate Co Directors Cover Financial Questionnaire **Anti-Money Laundering Requirements** – Please refer to your account manager	**Partnership Buy / Sell Double Option Agreement** – one single agreement which is to be signed by all the participating partners. *This draft agreement is available on www.bline.ie*

WHAT ARE THE TAXATION IMPLICATIONS OF A PARTNERSHIP INSURANCE ARRANGEMENT?

TAXATION OF PLAN PROCEEDS – LIFE OF ANOTHER

Capital Gains Tax

The proceeds of the partnership life assurance arrangement payable on death are not liable to capital gains tax under current legislation.

Inheritance Tax

On death the proceeds of the plan are paid to the plan owner where the arrangement has been made on a 'life of another' basis. Where the plan is arranged on a 'life of another' basis under current legislation there will be no inheritance tax liability for the surviving partner provided he/she has paid the premium for the benefit he/she will receive.

TAXATION OF PLAN PROCEEDS – OWN LIFE IN TRUST

Capital Gains Tax

The proceeds of the partnership protection arrangement payable on death or disablement are not liable to capital gains tax under current legislation.

Inheritance Tax

On death the proceeds of the plan are paid to the trustee(s) of the plan for the benefit of the surviving partners.

The Revenue Commissioners have clarified that the proceeds of such a plan are exempt from inheritance tax in the hands of surviving partners in certain circumstances, to the extent that they use the proceeds to purchase the deceased's share of the business.

TAXATION ON SALE OF SHARES BY PERSONAL REPRESENTATIVES

The proceeds from the disposal of the share in the partnership would be liable to capital gains tax in the hands of the personal representatives of the deceased. However a liability to tax would only arise on any increase in the value of the business from the date of death to the date of sale and, as such, is likely to be small.

It is important to remember that the value received for the deceased partner's share in the business could give rise to an inheritance tax liability for the deceased's family.

WHAT IF THERE IS EXCESS MONEY FROM THE POLICY OVER THE VALUE OF THE DECEASED'S SHARE OF THE BUSINESS?

How the excess is treated depends on whether the arrangement is set up as an 'own life in trust' arrangement or a 'life of another' arrangement.

Where an 'own life in trust' arrangement is used, any surplus arising on the death of a partner will be liable to inheritance tax in the hands of the surviving partners who are beneficiaries of the life assurance policy.

Where a 'life of another' arrangement is used, because the plan owner paid the premium for the 'benefit' he/she received, the proceeds are completely tax free in his/her hands.

See Appendix III for the following Irish Life Sample documents:

1. Sample Partnership Insurance An Advisers Guide
2. Sample Partnership Insurance Legal Agreement
3. Sample Partnership Insurance Trust Form

WHAT FINANCIAL EVIDENCE WILL BE REQUIRED TO UNDERWRITE A SHAREHOLDER/PARTNERSHIP COVER PLAN?

- Irish Life have a specific partnership / share purchase cover questionnaire that once completed will provide sufficient information in the majority of cases.
- Depending on the financial limits, this questionnaire should be completed by you and your customer. Check limits and requirements with your account manager or with underwriting. The limits are printed on the questionnaire.
- Key pieces of information to cover include
  - A clearly outlined reason for the partnership protection
  - Levels of cover that are appropriate to their % share and value of the business
  - Details of and reasons for all other cover on the partners
  - General background information on the business
  - How the valuation of the business has been calculated
  - Trading figures for the previous three years.

WHEN WILL THIRD PARTY FINANCIAL EVIDENCE BE REQUIRED?

- For life cover in excess of a certain limits, the underwriters will require the financial questionnaire to be countersigned by the company secretary or a company director. These limits are printed on the questionnaire.
- There may also be a requirement for a copy of the last two years' business accounts.

DO UNDERWRITERS USUALLY REQUIRE SIGHT OF PARTNERSHIP AGREEMENTS?

No, once it is confirmed that there is one in place or being arranged that is generally sufficient for underwriting.

WHAT IF THE LEVEL OF COVER DOES NOT MATCH THE VALUE OF THEIR SHARE OF THE PARTNERSHIP?

- If the cover is less than the valuation of their share of the partnership a brief explanation should suffice, but check with the underwriting department.
- Cover of up to 110% of the value of the shareholding may be acceptable in circumstances where there is clear evidence that the value of the business is likely to grow.

WHAT IF THERE HAVE BEEN RECENT LOSSES IN THE BUSINESS?

- This does not automatically mean that we cannot offer cover.
- Provide a clear explanation as to the reasons for the financial loss in that year(s).
- A copy of the last two years' accounts would be helpful in these circumstances. Also recent trading figures, if business has returned to profit since last set of audited accounts.

SECTION 2

ESTATE PLANNING

INTRODUCTION – WHY IS ESTATE PLANNING IMPORTANT FOR YOUR CLIENTS?

In the past, 'estate planning' was something believed to be only for the elite in our society: a small number of wealthy individuals and their families. However, this is no longer the case. If your clients are planning to leave their house, their savings or any other assets to their family, you, as their Financial Broker, can help make sure the real value of these assets is not reduced by inheritance tax. Despite the recent downturn in the economy, it is still important to protect estate values. Reductions in the tax free thresholds, together with increases in the capital acquisitions tax rate, have resulted in more and more people who previously did not have to give consideration to this area now needing to do so.

Revenue reported that in 2013, €277 million was paid in capital acquisitions tax.

The rate of capital acquisitions tax, both for gifts and inheritances, increased from 20% in 2008 to 33% in 2013.

Tax free thresholds have been reduced. For example, the Group 1 threshold from parents to children reduced from €521,208 in 2008 to €280,000 in 2015. The impact of these changes, it outlined in the following table:

Inheritance Tax Liability			
Year	**2008**	**2012**	**2015**
Tax Rate	20%	20%	33%
Group 1 Threshold	€521,208	€250,000	€280,000
Inheritance			
€300,000	Nil	€15,000	€6,600
€500,000	Nil	€75,000	€72,600
€1,000,000	€95,758	€225,000	€237,500

For example:
Mr and Mrs Kelly are aged 55 and their estate, valued at €3,000,000, is to be divided equally between their three children. Their children's inheritance tax bill will be €712,800, i.e. 24% of the estate will be taken in tax.

HOW DO I APPROACH THE ISSUE OF CAPITAL ACQUISITIONS TAX PLANNING WITH CLIENTS?

Many people start off by looking to save tax and avoid legal problems. While this is vitally important, it is equally important to try to plan for what your clients would like and what is practical in their particular family or business circumstances.

So you start with the facts and your client's intentions, and then look to minimise any problems and plan for any tax impacts that cannot be overcome:

Ask your clients some initial questions:

- What would you like to happen on your death?
- Does everything go to a spouse, a partner, some to children, a charity, and a friend?
- Are there practical considerations?
- Your client may have a good idea of what they want to happen, but has this been legally copper-fastened: have they made a will?

WHY SHOULD YOUR CUSTOMER MAKE A WILL?

- A will ensures that the estate will be divided according to the individual's wishes and not as the Succession Act 1965 dictates.
- For people with young children it provides an opportunity to appoint legal guardians to the children in the event that both parents should die together: in a car or plane crash, for example.
- The exercise involves a useful financial review. It highlights just how financially prepared your client's family would be in the event of unexpected death.
- A will is an essential part of planning for capital acquisitions tax. By making a will an individual can, for example, make maximum use of the thresholds for his/her children and the spouse and civil partner exemption from inheritance tax.
- Generally speaking there is less delay and dispute where an individual dies and leaves a will than where no will exists.

MAKING A VALID WILL

The Succession Act 1965 covers some of the requirements for making a will.

1. A will can be made by any person over age 18, or who is married, and is of "sound disposing mind".
2. A will must be "in writing", which can include printed or typed wills.
3. The will must be signed by the testator, i.e. the person making the will, in the presence of two or more witnesses present at the same time.
4. The witnesses are only testifying to the signature of the testator. They do not have to read the will, nor is it necessary for them to know what is contained in the will. It is important to note that a witness or any spouse of a witness cannot benefit under the will.
5. While an individual can draft his will in any way he wants he should bear in mind that the Succession Act of 1965 does give certain rights to an individual's spouse, civil partner and children in certain circumstances, regardless of the terms of the will.

REVOKING A WILL

An individual's circumstances can change over time. A will made a number of years ago may not take account of the fact that the individual is now married, has more children or indeed has some grandchildren whom he wishes to include. It is therefore not only important to make a will; it is vital to review it from time to time.

A will can be revoked in a number of ways:

1. By making another will. It is standard practice to insert a clause in a will to say that this will revokes all previous wills. If, therefore, an individual makes a new will and signs it, this will automatically cancel any previous will.
2. A will made when single is automatically revoked if the individual subsequently marries.
3. By the destruction of the will. The Succession Act provides that a will is automatically revoked "by burning, tearing or destruction of it by the testator, or by someone in his presence and by his direction with the intention of revoking it."

SUCCESSION ACT 1965

When a person dies all their property devolves to their 'personal representatives' to transfer to the individual's successors. The way property is transferred will depend on whether or not the deceased had made a will. If there is a valid will the personal representatives, the 'executors' distribute the assets in accordance with the terms of the will. If there is no will the individual is said to have died 'intestate' and the property is distributed by the personal representatives, 'administrators', in accordance with the provisions of the Succession Act 1965. The Succession Act provides a legal spouse, a registered civil partner and children with certain minimum legal entitlements as follows:

No will - where a person dies 'intestate'	
Spouse or civil partner no children:	Spouse or civil partner entitled to full estate
Spouse or civil partner and children:	Spouse or civil partner gets2/3rds. Civil partners entitlement is subject to the financial needs of any children being met 1/3 equally between children.
No spouse or civil partner but children:	Estate is divided equally between the children
No spouse or civil partner and no children:	Parent(s) if living, otherwise brothers/ sisters

Where an individual dies 'intestate' leaving neither spouse, civil partner nor children, his assets will pass to his parents, if his parents are deceased to his brothers and sisters, otherwise to wider family; the Act provides a hierarchical list.

Will - a 'testate' death (entitlement regardless of provisions of will):	
Spouse or civil partner and no children:	Spouse or civil partner entitled to ½ the estate
Spouse or civil partner and children:	Spouse or civil partner entitled to 1/3 of estate. Civil partners entitlement is subject to the financial needs of any children being met as directed by the courts.

An individual can make a will any way he wants, but Sections 111 and 111A of the Succession Act give a surviving spouse or civil partner certain legal rights regardless of what the will provides.

Children do not have a right to a particular share of the estate under a will. However, Section 117 of the Succession Act gives a child the right to apply to the court for a share of the estate under a will if in the court's opinion "the testator has failed in his moral duty to make proper provision for the child in accordance with his means."

It is worth mentioning that while this right of the child to apply to the courts will not affect the portion of the estate to which a legal spouse has a statutory right, it could impact on the amount of the estate to which a registered civil partner is entitled.

WHAT IS THE TARGET MARKET FOR CAPITAL ACQUISITIONS TAX PLANNING?

- Parents who wish to fund for their children's tax bill in the event of their death.
- Adult children who will have an inheritance tax bill on the death of their parents.
- Business owners who wish to ensure the survival of their business when they pass it on to the next generation.
- Farm owners who wish to protect the value of their land and agricultural assets when they are passed on to the next generation.
- Anyone planning to pass an Approved Retirement Fund (ARF) to a child over 21 years of age.

WHAT IS INHERITANCE TAX?

Inheritance tax comes under the heading of capital acquisitions tax.

Capital acquisitions tax (CAT) is the tax that is charged when you receive a gift or an inheritance. We will be dealing with gift tax payable on lifetime gifts and inheritance tax payable on inheritances received on a death.

WHO PAYS THE TAX?

It is the person receiving the gift or inheritance who is liable to Capital Acquisitions Tax and not the person or estate providing the benefit.

WHO IS LIABLE TO THIS TAX IN IRELAND?

The beneficiary of the asset is primarily liable for the payment of capital acquisitions tax. Whether or not a charge to tax arises is dependent on whether the disponer (the deceased person who is providing the inheritance) or the beneficiary (the person receiving the inheritance) is resident or ordinarily resident in the State at the date of the gift or inheritance.

- If the disponer or the beneficiary is resident or ordinarily resident in Ireland, then the entire estate will be liable to capital acquisitions tax here.
- If both the disponer and the beneficiary are not resident or ordinarily resident in Ireland, then only Irish property will be liable to tax, e.g. Irish property, shares in an Irish company, and money in an Irish bank account.

WHAT HAPPENS WHEN THE TAX FALLS DUE?

On death an Inland Revenue Affidavit has to be completed by the personal representatives of the deceased's estate. This affidavit sets out details of the deceased's assets and gives the names and addresses of beneficiaries.

It is not only the assets of the estate that must be included on this form.

If, for example, the proceeds of a life assurance plan have been left in trust to particular beneficiaries, even though these proceeds do not form part of the deceased's estate, full details of the plan and the beneficiaries should be included in the Inland Revenue Affidavit.

Details of previous gifts/inheritances made by the deceased must also be included.

A capital acquisitions tax return must be completed by a beneficiary if the value of a gift or inheritance exceeds 80% of the threshold amount.

PAYMENT OF CAPITAL ACQUISITIONS TAX

The tax is due and payable on the valuation dates indicated below.

31 October 2013	Payment of CAT on gift/inheritance from 1 September 2012 to 31 August 2013
31 October 2014	Payment of CAT on gift/inheritance from 1 September 2013 to 31 August 2014.
31 October 2015	Payment of CAT on gift/inheritance from 1 September 2014 to 31 August 2015.
31 October 2016	Payment of CAT on gift/inheritance from 1 September 2015 to 31 August 2016.

- If tax is not paid by the relevant payment dates interest will be charged.
- If your client receives a gift or inheritance they may be obliged to file a return before the above dates even in circumstances where there is no liability to tax on the current benefit.
- In the case of gifts the Revenue may write to individuals requiring them to make a return or a nil return as the case may be.
- Donors of gifts may also be called upon to make a return in certain circumstances.

WHAT VALUE IS USED FOR THE ASSETS WHEN CALCULATING THE LIABILITY?

The first step in calculating a liability to CAT is to assess the value of the assets that will be passed on. Tax is payable on the value of all the assets inherited / received.

Tax is based on the market value of assets. Market value is the price that, in the opinion of the Revenue Commissioners, the assets would fetch if sold on the open market in such a manner that best price is obtained.

No account is taken of the fact that a forced sale could depress market value. If the Revenue is not satisfied with a valuation submitted, they can obtain their own valuation. Where there is a difference, the Revenue can impose their valuation. The Revenue valuation can be appealed so the valuation in practice ends up somewhere between the two.

WHAT ARE THE CAT RATES AND THRESHOLDS THAT APPLY?

For new gifts and inheritances received on or after the 5th of December 2001 tax is calculated according to the total of all gifts and inheritances received from all sources since 5th December, 1991. The following CAT table currently applies:

	Tax Rate
Group Threshold	Nil
Balance	33%

The group threshold amounts vary depending on the relationship between the beneficiary and the disponer, i.e. the person providing the gift or inheritance.

Group 1 €280,000	Where the person receiving the property is a child of the disponer or of the civil partner of the disponer or a minor child of a deceased child of the disponer or of the civil partner of the disponer, or a minor child of the civil partner of a deceased child of the disponer, or of the civil partner of the disponer.
Group 2 €30,150	Where the person receiving the property is a lineal ancestor, descendant, a brother/ sister, or child of a brother/ sister or the child of a civil partner of a brother or sister of the disponer.
Group 3 €15,075	All other cases

The threshold amounts are those applying with effect from midnight on 13th October 2015.

WHAT DOES AGGREGATION MEAN?

Under the current aggregation rules all benefits from Group 1 will be added together with an overall threshold of €280,000. Benefits from Group 2 members (brother, sister, grandparent etc.) will be added together for the purpose of the €30,150 threshold, and benefits from Group 3 members (strangers) for the purpose of the €15,075 threshold. So in effect a beneficiary can potentially receive up to €325,225 tax free if the benefits come through different 'groups'.

WHAT ASSETS ARE LIABLE TO INHERITANCE TAX?

The personal representatives of the deceased must list all assets and liabilities of the deceased when completing a tax return in relation to inheritance tax.

Tax is levied on the total net value of all assets received by a beneficiary, other than a legal spouse or civil partner.

All assets are taken into account. These could include:

- The family home
- Second home
- Investment property
- The value of all investments
- Cash
- Pension
- All personal property
- Life assurance benefits
- House contents
- Jewellery

WHAT RELIEFS OR EXEMPTIONS CAN APPLY?

Certain reliefs and exemptions apply to certain types of assets. These have been introduced over the years primarily to encourage private enterprise and to avoid the forced sale of a family farm, business or the family home in certain circumstances. The main exemptions or reliefs are:

SPOUSE OR CIVIL PARTNER EXEMPTION

Gifts or inheritances received by one spouse or civil partner from the other are totally exempt from CAT.

AGRICULTURAL RELIEF

The value of farmland, buildings and stock can be reduced by 90% where the beneficiary is a qualifying farmer and he or she holds the property for a minimum of six years.

BUSINESS RELIEF

Can provide a similar reduction of 90% in the value of certain businesses or private companies, where both the business and the beneficiary meet certain qualifying conditions.

FAMILY HOME RELIEF

Exemption from gift and inheritance tax is available on the value of certain dwellings with up to an acre of land where the beneficiary meets certain conditions that ensure that the property was, and continues to be, their home.

FAVOURITE NIECE/NEPHEW RELIEF

Favourite Nephew/Niece relief entitles a beneficiary who is a child of the disponer's brother or sister or a child of the civil partner of the disponer's brother or sister to be treated as a 'child' of the disponer provided certain conditions are met. Where the relief applies, the niece or nephew is entitled to the Group 1 threshold instead of the Group 2 threshold.The relief will only apply to assets used in connection with a business.

LIFE ASSURANCE RELIEF

The proceeds of life assurance policies, where the plan was effected specifically for the payment of inheritance tax, will not be subject to inheritance tax - provided they are actually used to pay the tax bill.

SPOUSE OR CIVIL PARTNER EXEMPTION

Perhaps the most important relief from inheritance tax is the spouse or civil partner exemption, where gifts or inheritances received by one spouse or civil partner from the other are totally exempt from CAT. This relief currently applies only in the case of a "Legal Spouse" or "Registered Civil Partner". Cohabitants who are not married are currently treated as strangers for inheritance and gift tax purposes.

CIVIL PARTNERSHIP AND CERTAIN RIGHTS AND OBLIGATIONS OF COHABITANTS ACT 2010

Our society today is changing and more and more people are living together in 'non-married' situations.

The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 has introduced new definitions for, and extended certain rights to, these relationships.

CIVIL PARTNERS

The Act defines a civil partnership as a relationship between two individuals of the same sex, neither of whom are married or in an existing civil partnership or under the age of 18.

The legislation amended the Succession Act 1965 to give a registered civil partner somewhat similar rights to those of a legal spouse on death, subject to the financial needs of any children being met. As a follow on from this change the spouse exemption from CAT was also extended to civil partners in the Finance (No. 3) Act 2011.

COHABITANTS

A cohabitant is one of two adults, who can either be of the same or opposite sex, who live together as a couple in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship, or married to each other, or civil partners of each other.

A qualified cohabitant is defined as an adult who was in a relationship of cohabitation with another adult and who was living with the other adult as a couple for a period of two years or more, in the case where they are the parents of one or more dependent children, and of 5 years or more in any case.

It is worth noting that neither the Succession Act rights nor the CAT exemption available to civil partners were extended to cohabitants. So while a qualified cohabitant may apply for provision out of their deceased cohabitant's estate, they are only entitled to an amount after any spouse's and civil partner's rights have been satisfied, and any inheritances or gifts they do receive from their 'cohabitant' will be subject to CAT.

This means that one cohabitant inheriting from the other would be entitled only to the 'strangers' threshold of €15,075.

AGRICULTURAL RELIEF

In addition to the relief available on the value of farmland, buildings and stock, agricultural relief can be claimed where a gift of, say, cash from an investment based estate is gifted to a qualifying 'farmer' on the basis that the asset is converted to qualifying agricultural property within two years of the date of the gift or inheritance.

What this means in effect is that the asset gifted does not have to be agricultural property, but once the gift is made subject to it being converted to qualifying agricultural property by a qualifying farmer, the relief can still be claimed on the gift or inheritance where the recipient is a qualifying farmer.

This relief is given in respect of certain agricultural property taken by a "farmer". The relief reduces the market value of the agricultural property by 90% for gifts and inheritances taken on or after the 23rd of January 1997.

The market value of the agricultural property as so reduced is then termed "agricultural value" in the Act and is substituted for market value in the calculation of tax.

AGRICULTURAL RELIEF – REVENUE GUIDELINES

With effect from 1st January 2015 changes have been made to the conditions for agricultural relief from CAT which are designed to confine the relief to genuine farmers and ensure productive use of the agricultural property.

For gifts and inheritances taken on or after 1st January 2015 the beneficiary must satisfy the following additional conditions:

1. Have an agricultural qualification (a qualification of the kind listed in Schedule 2, 2A or 2B of the Stamp Duties Consolidation Act 1999) or obtain such a qualification within 4 years and farms the agricultural property for a period of not less than six years on a commercial basis and with a view to the realisation of profits

Or

2. Spends not less than 50% of his or her normal working time farming agricultural property on a commercial basis with a view to making a profit for a period of not less than six years commencing on the valuation date.

Alternatively, where the beneficiary leases the agricultural property the individual to whom the property is leased must also satisfy condition 1. or 2. above.

NORMAL WORKING TIME

"Normal working time" (including on-farm and off-farm working time) has been defined by Revenue as 40 hours per week. This will enable farmers with off-farm employment to qualify for the relief provided they spend a minimum of 20 hours working per week, averaged over a year, on the farm.

VALUATION DATE

These additional requirements apply from the valuation date of the gift or inheritance.

In the case of a gift of agricultural property, the date of the gift is the "valuation date".

In the case of an inheritance, the valuation date can be as early as the date of inheritance if the person inheriting farms the agricultural property from the date of death of the deceased whereas in other situations this can be the date of grant of probate or administration.

SPLITTING THE GIFT OR INHERITANCE

Where a beneficiary receives agricultural property which includes a farm house, and leases the land to an individual or company which will satisfy the farming conditions but retains the farm house and resides in it as his or her only or main residence, Revenue will not seek to restrict the relief.

As a result of these changes the revised conditions for agricultural relief from CAT with effect from 1st January 2015 are as follows:

- The relief only applies to "agricultural property" which is defined as "agricultural land, pasture and woodlands situated within a Member State and crops, trees and underwood growing on such land and also includes such farm buildings, farm houses and mansion houses (together with lands occupied therewith) as are of a character appropriate to the property." The relief also applies to stock and farm machinery.

- Any milk quota attaching to lands will also qualify for reduction as part of the market value of the lands.

- The relief only applies to agricultural property acquired by an individual, domiciled in the State, who after taking the agricultural gift or inheritance not less than 80% of his gross assets are represented by the value of agricultural property, including livestock, bloodstock and farm machinery. For gifts or inheritances taken on or after 1st February 2007 a donee is allowed to offset borrowings for the purchase, repair or improvement of on an off farm principal private residence against the value of the property for the purpose of the 80% test.

For gifts or inheritances received after 1st January 2015 the beneficiary must

1. have a relevant agricultural qualification or attain such a qualification within four years of the date of the gift or inheritance, and must farm the agricultural property for a period of not less than six years on a commercial basis with a view to realising a profit.

or

2. spend not less than 50% of their normal working time farming the agricultural property for a period of not less than six years on a commercial basis with a view to realising a profit. Normal working time approximates to 40 hours per week.

Where the beneficiary leases the agricultural property the individual to whom the property is leased must satisfy condition 1. or 2. above.

The relief is withdrawn in certain circumstances:

If within 6 years of the 'valuation date' the beneficiary ceases to qualify as a farmer as set out above and does not lease the land to a lessee who will farm the land for the remainder of the 6 year period. Or if within six years after the date of the gift or the inheritance lands are sold or compulsorily acquired in the lifetime of the donee or successor, and the agricultural property is not replaced within a year following a sale, or within 6 years following a compulsory acquisition where the land was compulsorily acquired on or after 25th March 2002.

If the gift or inheritance consists of development land and is disposed of in the period commencing 6 years after the date of the gift / inheritance and ending 10 years after the date there will be a partial claw back of the relief.

BUSINESS RELIEF

There are also some additional points worth mentioning in connection with business relief.

Firstly, the relief will only apply to "qualifying business assets". In the case of a partnership or sole trader, that is assets that are used in the course of a qualifying business activity. Where the value of a business includes some exempted assets, relief will be allowed on the value of the qualifying business assets only.

Let's take an example.

Company Valued At	€1,000,000
Qualifying Business Assets	€750,000
Non Qualifying Assets	€250,000
Business Relief	
90% x €750,000	€675,000
	The balance is taxable
€750,000 - €675,000	€75,000 (qualifying taxable assets)
+ Non qualifying Assets	€250,000
Taxable Value	€325,000

Also worth noting is the fact that the relief can also be extended to certain assets owned personally by the disponer that were used in the course of the business where those assets are also the subject of a gift or inheritance to the same beneficiary at the same time as the 'relevant' business assets.

BUSINESS RELIEF – REVENUE GUIDELINES

For gifts and inheritances taken on or after 23rd January 1997 the taxable value of "relevant business" property is reduced by 90%.

COMPANY SHARES

The definition of "relevant business property" includes unquoted shares and securities of Irish incorporated companies subject to certain conditions.

THE COMPANY

The company's business must not consist wholly or mainly of any of the following excluded activities:

- dealing in currencies, securities, stocks or shares, land or buildings, or the making or holding of investments.

THE BENEFICIARY

For the relief to apply the beneficiary must meet one of the following ownership/control tests:

i) The shares themselves or together with other shares in the company, held in the absolute beneficial ownership of the beneficiary, give the beneficiary control of 25% of the voting power over all matters relating to the company,

or

ii) The beneficiary controls the company or the company is controlled by the beneficiary and his relatives,*

or

iii) The beneficiary holds at least 10% of the issued capital of the company and has worked full time in the company for five years prior to the gift/ inheritance.

* Relatives of a person include his spouse or civil partner, his children or the children of his civil partner, mother, father, aunt/ uncle; and any children or grandchildren of any of the forgoing. In addition all spouses or civil partners of relatives are included for the purposes of determining control.

Control includes - having over 50% of the voting power, or owning more than 50% of the shares, or being in a position to control the board of directors.

BUSINESS RELIEF – UNINCORPORATED BUSINESS

Relevant business property also includes property consisting of a business (sole trader) or an interest in a business (share in a partnership). A business that is wholly or mainly concerned with dealing in land, shares, securities or currencies or the making or holding of investments is excluded. The relief will apply where the business or part of the business is transferred and not simply where an asset that had been part of the business is subject to CAT.

GENERAL CONDITIONS APPLYING TO BUSINESS RELIEF:

Along with the conditions that apply to the business and the beneficiary in order to qualify for business relief, there are some other general conditions worth noting:

Disponer

The property must have been owned by the disponer for a period of five years prior to a gift or two years in the case of an inheritance.

Claw-back of Relief

If within six years of the gift or the inheritance of business property:

- the business ceases to qualify, or
- the property is sold or compulsorily acquired and not replaced within one year with other business property the entire relief will be clawed back.

FAMILY HOME RELIEF

The Finance Act 2000 introduced a complete exemption from inheritance and gift tax on the value of a dwelling, provided the person inheriting the property satisfied certain conditions: broadly, that the dwelling was and continues to be their home. This is commonly referred to as 'family home relief'.

To qualify for the exemption the person who inherits the house must:

- have occupied the house as his/her sole or main dwelling for three years prior to the date of the gift or inheritance,
- at the date of the gift or inheritance not hold an interest in any other dwelling house
- continue to occupy the house as his/her sole or main residence for six years after the date of the gift or inheritance.

Thus the family home may be exempt from inheritance tax if the person who inherits it has lived in the house for three years before they inherit it, and they continue to live there for six years afterwards. In addition, at the time they receive the inheritance they must not own any other residential property - even owning a share in another property means that this relief will not apply.

The relief is not restricted to parent/child relationships. It is available between any two individuals, for example elderly brothers and sisters living together, or cohabiting couples. **Because of the reference to "family home" this relief is often misunderstood**.

MORE DETAILS - FAMILY HOME RELIEF – FINANCE ACT 2000

The value of a dwelling house taken on or after the 1st of December 1999 may be exempt from gift and inheritance tax in the hands of the beneficiary provided he or she satisfies certain qualifying conditions. Dwelling house, for the purpose of this relief, means a building or part of a building with up to one acre of land that is used or is suitable for use as a dwelling. To obtain the exemption the beneficiary must satisfy all the following conditions:

a) He or she must have occupied the dwelling house as his or her only or main residence continuously throughout the three year period immediately prior to the date of the gift or inheritance.*

In relation to a gift only, any period in the three year period prior to the date of the gift, during which a beneficiary occupied a house that was, at that time, the disponer's only or main residence, will not be treated as a period of occupation, unless the donor lived with the beneficiary by reason of old age, and is dependant on the beneficiary for services.

b) He or she must not be beneficially entitled to any interest in any other dwelling house at the date of the gift or inheritance.

c) He or she must continue to both own and occupy the dwelling house as his or her only or main residence throughout the period of six years following the date of the gift or inheritance.**

*Where the dwelling house directly or indirectly replaced other property, the three year period in condition a) will be satisfied if the beneficiary occupied both properties for a total of three of the four years prior to the date of the gift or inheritance.

In relation to a gift only the 'other property' and the property comprised in the gift must both have been owned by the disponer during the three-year period prior to the gift.

** The exemption will not be withdrawn where condition c) above is breached in the following circumstances:

i. as a result of the beneficiary requiring long term medical care in a hospital, nursing home or convalescent home, or

ii. where the beneficiary does not occupy the house as a result of working abroad, or

iii. where the beneficiary was aged 55 at the date of the gift or inheritance, or

iv. where the house is sold, if the beneficiary reinvests the proceeds in another dwelling house.

FAVOURITE NIECE/NEPHEW RELIEF

Favourite nephew/niece relief entitles a beneficiary who is a child of the disponer's brother or sister or a child of the civil partner of the disponer's brother or sister to be treated as a 'child' of the disponer provided certain conditions are met. Where the relief applies, the niece or nephew is entitled to the Group 1 threshold instead of the Group 2 threshold.

The relief applies to a niece or nephew who has worked substantially on a full time basis for the disponer for the period of five years ending on the date the disponer ceases to have a beneficial interest in possession in the business. The relief will only apply to assets used in connection with the business. Note that farming is a business for the purposes of the relief. In order to qualify for the relief, the beneficiary must have worked a minimum number of hours in the disponer's business, i.e.

- 15 hours per week in a small business, i.e. a business carried on exclusively by the disponer, the disponer's spouse or civil partner and the nephew/niece.
- 24 hours per week in a larger business, i.e. where there are other employees.

The relief (Group 1 Threshold) will only apply to business assets. If there is an inheritance/gift of both business and non-business assets, the Group 1 threshold will apply to the business assets and the Group 2 threshold will apply to the non-business assets. As only benefits within the same Group threshold aggregate, the beneficiary will have two separate thresholds if the benefit consists of both business and non-business assets.

LIFE ASSURANCE RELIEF

As already stated, inheritance tax is due and payable at certain payment dates. Unpaid tax attracts interest, which is not tax deductible. Therefore if no advance provision is made for inheritance tax, then the beneficiaries of the inheritance will have to either:

- Sell part of their inheritance, or
- Borrow money to pay inheritance tax.

MAKE ADVANCE PROVISION

The solution lies in effecting a life assurance plan with a sum assured equal to the value of the beneficiaries' estimated inheritance tax liability, with the people who will receive the assets of the estate being the nominated beneficiaries of the plan.

SECTION 60 RELIEF – NOW CONTAINED IN SECTION 72, CAPITAL ACQUISITIONS TAX CONSOLIDATION ACT 2003

To encourage people to plan ahead, and to have cash available to pay inheritance tax when they die, relief is available on certain life assurance plans. This relief was introduced by Section 60 of the 1985 Finance Act to allow people to plan for the payment in a tax efficient manner. The legislation is now contained in Section 72 of the Capital Acquisitions Tax Consolidation Act 2003.

The relief provides that where a life assurance plan is put in place to provide for the payment of inheritance tax, Revenue will not seek to tax the plan proceeds to the extent that the money is used to pay inheritance tax arising on the death of the lives assured under the plan, provided certain conditions are met.

A plan effected under Section 72 of the Capital Acquisitions Tax Consolidation Act 2003 effectively gives your client an option. Rather than letting tax legislation decide how their estate will be distributed, they can pass on their assets in the way they wish: and plan for the tax consequences.

TAX PAYABLE ON THE INHERITANCE OF AN APPROVED RETIREMENT FUND

The Section 72 relief referred to above was extended by the Finance Act 2005 to cover the 30% tax liability on Approved Retirement Fund (ARF) monies inherited by a child over 21.

ARRANGING THE SECTION 72 PLAN

In line with Revenue guidance notes, it is recommended that the Section 72 plan be arranged under trust. The advantages of this are:

- It ensures that the plan proceeds are used, in the first instance, to pay inheritance tax. Any surplus may revert to next of kin.
- The proceeds will be paid immediately on death to the nominated trustee. The proceeds will not go into the estate.
- The trust gives flexibility in determining which beneficiaries are to benefit from the plan, and in what proportions.

The plan can be arranged under trust by completing a trust form along with the life assurance application.

BENEFITS OF LIFE ASSURANCE RELIEF

The benefit of using a 'qualifying' life assurance plan to fund for the payment of inheritance tax is that, as long as certain conditions are met, the proceeds of the plan, when used to pay inheritance tax, will not increase the beneficiaries' inheritance tax liability. As opposed to this, if the money was left in a bank account, for example, this money will be seen by Revenue as an additional inheritance and will increase the tax bill.

Example:

	Bank Account	Section 72/73 Policy
Policy Proceeds	€100,000	€100,000
Tax Payable	€33,000	Nil*
Left to Pay Tax	€67,000	€100,000

*Assuming the full amount is used to pay CAT

UNDERWRITING CONSIDERATIONS - INHERITANCE PLANNING PROTECTION

WHAT ADDITIONAL INFORMATION WILL AN UNDERWRITER LOOK FOR WHEN ASSESSING A SECTION 72 CASE?

In Irish Life, for most cases, an inheritance tax financial questionnaire, outlining how the level of cover is calculated, completed and signed by the Financial Broker and the customer, will be sufficient evidence. However, for very large cases the questionnaire may have to be signed and stamped by a solicitor or an accountant. Check with the underwriting department for individual requirements.

EXAMPLES OF CAT CASES FOR ILLUSTRATION PURPOSES

EXAMPLE 1 - ASSUMING NO RELIEFS APPLY

Estate valued at €1,500,000

The three beneficiaries are the client's children, each to receive 33% of the estate.

Tax Liability
The taxable value of the estate is €1,500,000, which gives each child a taxable inheritance of €500,000, on which tax is charged as follows:

		Inheritance Tax
First	€280,000* @ nil rate	Nil
Balance	€220,000 @ 33%	€72,600
Total	€500,000	€72,600

*Group 1 threshold available from midnight of October 13th 2015.

Therefore each child would have an estimated inheritance tax liability of €72,600, giving a total inheritance tax liability of 3 x €72,600, which is €217,800.

So the total inheritance tax liability amounts to €217,800.

The above assumes that full thresholds are available to the three children; and that the three children have not received any gifts or inheritances from their parents since the 5th of December 1991.

It also assumes that no reliefs (business / agricultural / dwelling home) will apply to the value of any of the assets in the estate.

This example is for illustration purposes only.

EXAMPLE 2 - ASSUMING BUSINESS RELIEF APPLIES

Estate valued at €2,500,000, consisting of:

Family Home	€500,000
Business Assets	€1,500,000
Savings / Investments	€500,000.

The two beneficiaries are the client's children, each to receive 50% of the estate.

Tax Liability
The taxable value of business property is reduced by 90%, assuming business relief applies.

This reduces the taxable value of this property to €150,000.

With other assets valued at €1,000,000, the total taxable value of the inheritance is €1,150,000, which gives each child a taxable inheritance of €575,000 on which tax is charged as follows:

		Inheritance Tax
First	€280,000* @ nil rate	Nil
Balance	€295,000 @ 33%	€97,350
Total	€575,000	€97,350

*Group 1 threshold available from midnight on October 13th 2015.

Therefore each child would have an estimated inheritance tax liability of €97,350, giving a total inheritance tax liability of 2 x €97,350, which is €231,000.

So the total inheritance tax liability amounts to €194,700.

The above assumes that full thresholds are available to both children; and that neither child has received any gifts or inheritances from their parents since the 5th of December 1991. Dwelling home relief will not apply to the value of the family home.

Business relief applies to the total value of the business assets.

This example is for illustration purposes only.

EXAMPLE 3 - EXAMPLES TO SHOW THE BENEFIT OF FAMILY HOME RELIEF

Estate valued at €1,000,000, consisting of:

Family Home	€500,000
Family Protection /Life Assurance	€250,000
Savings / Investments	€250,000

Assuming the estate passes to one child the inheritance tax bill is calculated as follows:

3a. Assuming the child still lives at home and family home relief applies:

If family home relief applies the value of the family home is not taken into account when calculating the child's tax liability. This reduces the taxable value of the child's inheritance to €500,000, on which tax is charged as follows:

		Inheritance Tax
First	€280,000* @ nil rate	Nil
Balance	€220,000 @ 33%	€ 72,600
Total	€500,000	€72,600

*Group 1 threshold available from midnight on October 13th 2015.

3 .b. Assuming the child lives in a dwelling house he/she purchased themselves and family home relief does not apply.

If family home relief does not apply to the value of the family home, then this amount must be taken into account when calculating the client's entire estate. This gives the child a taxable inheritance of €1,000,000, on which tax is charged as follows:

		Inheritance Tax
First	€280,000* @ nil rate	Nil
Balance	€720,000 @ 33%	€237,600
Total	€1,000,000	€237,600

*Group 1 threshold available from 14th December 2015.

The above assumes that the full Group 1 threshold is available to the child; and that the child has not received any gifts or inheritances from anyone else since the 5th of December 1991.

This example is for illustration purposes only.

EXAMPLE 4 - NON MARRIED COUPLES

Mary and John have been living together for ten years. They have never married. John dies and his assets pass, through his will, to Mary. His assets are valued at €790,000.

His share of the Family Home	€250,000
His Pension Death in Service Benefits	€240,000
Holiday Home in Cork	€250,000
Savings / Investments	€50,000.

Tax Liability
The total taxable value of Mary's inheritance is €790,000, on which tax is charged as follows:

		Inheritance Tax
First	€15,075* @ nil rate	Nil
Balance	€774,925 @ 33%	€255,725
Total	€790,000	€255,725

*Group 3 threshold available from midnight on October 13th 2015.

Therefore Mary's inheritance tax liability is €255,725.

The above assumes that the full Group 3 threshold is available to Mary. Mary has not received any gifts or inheritances from anyone else since the 5th of December 1991. Dwelling home relief will not apply to the value of the family home – this is because Mary is now the owner of another 'residential property', being the holiday home in Cork.

This example is for illustration purposes only.

Your client should seek professional tax and legal advice as the information given is a guideline only and does not take into account your client's particular circumstances.

CIVIL PARTNERS' / COHABITANTS' LIFE ASSURANCE

Our society today is changing and more and more people are living together in 'non-married' situations. With the implementation of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, rights similar to those of a married couple have been conferred on registered civil partners and qualified cohabitants. The changes made by the Finance (No. 3) Act 2011 have also had a positive impact on the tax treatment of these 'non married' couples.

Firstly you need to be aware of the new definitions for non-married relationships introduced by the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010.

CIVIL PARTNER

A civil partner is either of two persons of the same sex who are

- Parties to a civil partnership registration that has not been dissolved or the subject of a decree of nullity, or
- Parties to a legal relationship of a class that is the subject of an order made under Section 5 of the Act (Recognition of registered foreign relationships) that has not been dissolved or the subject of a decree of nullity.

Under the Act a civil partnership cannot be registered if

- The parties are within the prohibited degrees of relationship,
- Either of the parties is already in a civil partnership,
- Either of the parties is under age 18,
- Either of the parties does not give consent,
- The parties are not of the same sex,
- Either of the parties is already married.

COHABITANT

A cohabitant is one of two adults, who can either be of the same or opposite sex, who live together as a couple in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship, or married to each other, or civil partners of each other.

In deciding whether or not two adults are cohabitants the following will be taken into account:

- The duration of the relationship,
- The basis on which they live together,
- If any financial dependence exists,
- Any joint financial arrangements,
- Whether or not there are dependent children, and the support arrangements for any children,
- Whether the parties present themselves to others as a couple.

QUALIFIED COHABITANT

A qualified cohabitant means an adult who was in a relationship of cohabitation with another adult and who was living with the other adult as a couple for a period

- Of two years or more, in the case where they are the parents of one or more dependent children, and
- Of five years or more in any case.

FINANCIAL COMPENSATION ORDERS

Similar provisions to those in the Family Law Acts which allow a legal spouse to apply for a financial compensation order dictating the treatment of life assurance contracts within twelve months of the date of the decree have been granted to registered civil partners. There is no restriction on when an application for such an order must be made.

The same facility to apply for a financial compensation order has not been granted to qualifying cohabitants.

SUCCESSION AND INHERITANCE TAX FOR CIVIL PARTNERS AND CO HABITANTS

CIVIL PARTNERS

Rights similar to legal spouses have now been extended to registered civil partners in the event of death. Under the Succession Act a civil partner is now automatically entitled to a portion of their deceased civil partner's estate, subject to the needs of any children being met.

Also, as a result of separate legislation in the Finance (No. 3) Act the 'spouse' exemption from capital acquisitions tax (gift and inheritance tax) has also been extended to registered civil partners. So now civil partners are entitled to a portion of their deceased partner's estate and they can inherit it tax free.

COHABITANTS

The same rights on death have not been granted to cohabitants. A qualified cohabitant now has the legal right to apply for provision out of their deceased cohabitant's estate within six months of the granting of representation. However, it is not an automatic right, as in the case of a civil partner, and the cohabitant is only entitled to an amount after the spouse and civil partner's rights have been satisfied.

It is also worth mentioning that, while the surviving cohabitant partner now has the legal recourse to claim from the estate of their deceased cohabiting partner, no change has been made to the capital acquisitions tax legislation that governs the payment of inheritance tax on the transfer of those assets. So while the surviving cohabitant may receive an award on foot of their application they may still have to pay inheritance tax on the value of the assets.

OTHER TAXES

Following the tax changes made by recent legislation registered civil partners now have much the same tax treatment as a married couple (see summary provided). Some examples of interest might be exemption from exit tax on the transfer of ownership of a life assurance policy, exemption from stamp duty on the transfer of ownership of 'property' and relief from certain fees arising from the change of ownership between registered civil partners of a shared home, such as court fees, registry of deeds fees or land registration fees.

Cohabitants, however, have not been granted the same reliefs. The only reliefs extended to this group will be restricted to the tax treatment of maintenance payments and transfers of property following the court order on the termination of a cohabitant's agreement.

SUMMARY OF TAX TREATMENT

		Legal Spouses	Registered Civil Partners	Qualified Cohabitants
Inheritance Tax	Unlimited exemption for benefits taken on death or gift.	Yes	Yes	No – treated as 'strangers', Class 3 threshold applies.
Succession Act Rights	Certain automatic minimum rights to their respective estates under a will or intestacy.	Yes	Yes – see updated Succession Act.	No – see updated Succession Act.
Income Tax	Entitled to each other's tax credit, certain reliefs and allowances can be shared.	Yes	Yes	No – treated as single person.
Social Welfare Benefits	Qualify for State Widow's / Widower's contributory pension.	Yes	Yes	Various – see www.welfare.ie
Pension Scheme Death Benefits	Entitled to option of spouse's pension on death in service or retirement.	Yes	Yes	No – unless they can show financial dependence
Financial Compensation Order	Entitled to apply to court following the date of decree	Yes – within 12 months of the date of decree	Yes – no time frame specified	No
Pension Adjustment Order	Entitled to apply to the court for an order	Yes	Yes	Yes – but subject to proof of financial dependence
Capital Gains Tax	Treated as one unit for the purposes of calculation	Yes	Yes	No
Exit Tax	Exemption on assignments	Yes	Yes	No
Stamp Duty	Unlimited exemption on the transfer	Yes	Yes	No

SUCCESSION ACT INFORMATION

When a person dies all their property devolves to their 'personal representatives' to transfer to the individual's successors. The way property is transferred will depend on whether or not the deceased had made a will. If there is a valid will the personal representatives, the executors, distribute the assets in accordance with the terms of the will.

If there is no will the individual is said to have died intestate, and the property is distributed by the personal representatives, or administrators, in accordance with the provisions of the Succession Act 1965.

The Succession Act provides a legal spouse, a registered civil partner and children with certain minimum legal entitlements as follows:

No Will - where a person dies 'intestate'	
Spouse or civil partner and no children	Spouse or civil partner entitled to full estate.
Spouse or civil partner and children	Spouse or civil partner gets 2/3 Civil partner's entitlement is subject to the financial needs of any children being met 1/3 is divided equally between children.
No spouse or civil partner but children	Estate is divided equally between children.
No spouse or civil partner and no children	Parent(s) if living, otherwise brothers / sisters.
Nieces and nephews only	Divided equally between those surviving.
Other relatives	Divided equally between nearest equal relationship
No relatives	The State

Where an individual dies intestate leaving neither spouse, civil partner nor children, his / her assets will pass to parents; if his / her parents are deceased to his / her brothers and sisters; otherwise to wider family: the Act provides a hierarchical list

Will -a 'testate' death (entitlement regardless of provisions of will)	
Spouse or civil partner and no children	Spouse or civil partner entitled to 1/2 of estate.
Spouse or civil partner and children	Spouse or civil partner entitled to 1/3 of estate. Civil partner's entitlement is subject to the financial needs of any children being met as directed by the courts.

An individual can make a will any way he/she wants, but Sections 111 and 111A of the Succession Act give a surviving spouse or civil partner certain legal rights regardless of what the will provides.

Children do not have a right to a particular share of the estate under a will. However, Section 117 of the Act gives a child the right to apply to the court for a share of the estate under a will if in the court's opinion "the testator has failed in his moral duty to make proper provision for the child in accordance with his means".

It is worth mentioning that while this right of the child to apply to the courts will not affect the portion of the estate to which a legal spouse has a statutory right, it could impact on the amount of the estate to which a registered civil partner is entitled.

IMPACT ON SUCCESSION ACT RIGHTS FOLLOWING A DIVORCE/SEPARATION/ DISSOLUTION OF A CIVIL PARTNERSHIP

The surviving spouse or civil partner is legally entitled to the appropriate share regardless of the actual terms of the will. The fact that the parties may have lived apart for many years does not of itself affect their entitlements under the Succession Act 1965.

Succession rights can be renounced voluntarily by either or both spouses or civil partners in a separation agreement, known as a Deed of Separation. It is usual for separating couples to renounce rights to each other's estates in a separation agreement; however a separation does not always involve renunciation of succession rights.

If both parties cannot agree, then they may have no alternative but to seek the assistance of the courts. This may take the form of judicial separation or divorce.

JUDICIAL SEPARATION

A judicial separation occurs where the court determines that the couple is no longer obliged to live together as a married couple. A judicial separation cannot be applied for unless the couple has a separation agreement.

In granting a decree of judicial separation, a court can remove a spouse's succession rights once it is satisfied that there exists adequate provision for the spouse whose rights are being extinguished.

The court must make proper provision for:

- Spouses
- Any dependent children
- Custody of dependent children
- Family home
- Maintenance and financial provision.

DIVORCE

- A divorce occurs where a court order is made that dissolves a marriage or civil partnership. This allows either member of the former couple to enter a new civil partnership or marriage.
- Once a decree of divorce or dissolution is granted, the parties are no longer married or in a civil partnership, and succession rights are automatically extinguished.
- A divorce or dissolution decree means the end of succession rights, and as with a judicial separation the court has the power to take the loss of these rights into account when deciding on the financial settlement between the spouses or civil partners.
- The court also has the power to make orders in respect of life assurance for spouses and dependent children

The Family Law (Divorce) Act 1996 deals with the issue of Succession Act rights in the context of divorce.

DISSOLUTION OF CIVIL PARTNERSHIP

Once a decree of dissolution is granted, the parties are no longer in a civil partnership, and succession rights are automatically extinguished.

Therefore, if your former partner dies without a will, the right to inherit no longer applies.

However, the surviving partner may inherit if:

- the person is named in the former civil partner's will; or
- a request is made to the court requesting that provision be made for the surviving civil partner out of the deceased civil partner's estate.

MAINTENANCE PAYMENTS ON SEPARATION OR DIVORCE

When putting cover in place to provide for maintenance payments as a result of a divorce decree or separation agreement there are various ways of structuring the life assurance contract to ensure that it is in line with the requirements of the legal agreement.

How you set up the contract will depend on two things:

- Who needs to have ownership of, and control over, the contract during the lifetime of the life assured?

and

- Who needs to receive the death benefit on the death of the life assured / who is to be the beneficiary of the sum assured on the death of the life assured?

LET'S TAKE AN EXAMPLE

Conor has separated from his wife Julie. As part of their separation agreement he has been instructed to put cover in place to provide maintenance payments for their two children, Emma and Sophie, in the event that he dies before they finish full time education.

There are two options for how to structure this cover:

- Own life in trust
- Life of another.

Own life in Trust

Conor effects a single life term assurance protection plan using a single life flexible trust form. He is the life assured and the settlor trustee on the contract during his lifetime. His two children, Emma and Sophie, are the beneficiaries of the contract under the trust.

Conor pays the premium on the contract.

Ownership / Control

Conor owns and controls the contract during his lifetime. Any alterations must be authorised by Conor and notification of any unpaid premiums will be issued to Conor.

Who receives the benefit?

On Conor's death the sum assured is paid to the nominated trustee, for the benefit of Emma and Sophie as beneficiaries under the trust. As Conor paid the premium on the contract, the girls will be subject to inheritance tax on the sum assured.

Assuming they inherit nothing else from their father they will each be able to avail of the Group 1 tax free threshold of €280,000 before they have to pay inheritance tax.

Important note: A contract issued in trust cannot be assigned to a bank as security for a loan.

Life of Another

Conor is the life assured under a single life term assurance plan with Julie as the proposer / policy owner. Conor pays the premium on the contract.

Ownership / Control

Julie owns and controls the contract. Any alterations must be authorised by Julie and notification of any unpaid premiums will be issued to Julie.

Who receives the benefit?

On Conor's death the sum assured is paid to Julie directly as she is the proposer / policy owner. She can then use the sum assured to provide for her two daughters. Even though Conor paid the premium on the contract, because the policy was set up in line with a separation agreement, Julie will not be subject to inheritance tax on the policy proceeds.

As you can see both structures ensure that there are funds in place to provide for Emma and Sophie. The main differences are around who owns and controls the contract and who the death benefit is paid to.

The correct structure will depend on what is stipulated in the legal agreement.

ARRANGING PROTECTION COVER FOR COHABITING COUPLES

As you can see from the previous sections, registered civil partners are now treated in much the same way as legal spouses from a Succession Act and an inheritance tax perspective. As the same rights and exemptions have not been given to other cohabiting couples you still need to be aware of the following areas when advising these clients:

- Family Home Relief
- Other Assets
- Use of the small gifts exemption
- Mortgage Protection
- Personal Protection

FAMILY HOME RELIEF

The Finance Act 2000 introduced a complete exemption from inheritance tax on the value of "a dwelling", provided the person inheriting the property satisfied certain conditions – basically that it was, and continued to be, their home. This is commonly referred to as 'family home' relief. The relief is available to any individual who satisfies the conditions and not just to qualified cohabitants.

To qualify for the exemption the person who inherits the home:

- must have occupied the house as their sole or main dwelling for three years prior to the date of the inheritance,
- does not hold an interest in any other dwelling house at the date of inheritance,
- continues to occupy the house as their sole or main residence for six years after the date of the inheritance.

What this means is that once a couple have been living in the house for three years, regardless of which of them owned the house, or paid the mortgage or the mortgage protection policy, there will be no inheritance tax liability on the value of the house if the above conditions are met.

If the above conditions are not met then there could be significant tax implications for the survivor.

MORTGAGE PROTECTION EXAMPLE

John and Mary buy a house in joint names. They contribute equally to the deposit, mortgage repayments and joint mortgage protection policy.

The house is valued at €500,000, assuming it's held as joint tenants.

John dies in the first year of the mortgage.

Mary inherits 50% of the property, worth €250,000.

The mortgage is cleared by the mortgage protection policy.

The tax free threshold for Mary is €15,075, with tax at 33% on €234,925 = €77,525.

Options

Increase mortgage protection policy by €80,000.

Possible tax on €40,000 at 33% is €13,200.

or

Life of another policy, by Mary on John's life, for a sum assured of €80,000.

If Mary had made no contribution to the purchase of the house then she would inherit 100% of the value of the house and she would be faced with a tax bill of €160,025.

After three years family home relief may apply, assuming all the other conditions are met.

OTHER ASSETS

With the possible exception of the family home, the total value of all assets is liable to inheritance and gift tax, regardless of how long the couple are living together. Where a cohabiting partner inherits other property, including a death benefit under an insurance policy, the €15,075 threshold could easily be exceeded.

PERSONAL PROTECTION

When you are structuring a life assurance policy for your cohabiting clients, whether or not inheritance tax will be paid on any pay-out from the contract will be decided by two things:

- Who will receive the policy proceeds on death (the beneficiary)?
- Who paid the premiums on the policy?

If the beneficiary did not pay the premiums, or if the beneficiary is not the legal spouse or registered civil partner of the person who paid the premiums, the policy proceeds will be liable to inheritance tax.

EXAMPLE 1

John Brown takes out life cover of €100,000 on his own life and pays the premiums by direct debit from his own bank account. John dies and based on the terms of John's will the €100,000 is paid to his cohabiting partner Mary Smith.

Assuming Mary inherited no other assets, the liability to tax is as follows:

- Mary's taxable inheritance is €100,000.
- Threshold of €15,075 exempt.
- Balance €84,925 taxed at 33% = €28,025.

EXAMPLE 2

John Brown and Mary Smith take out dual life cover of €100,000 each. John and Mary are joint owners, and pay premiums out of their joint account. John dies and the €100,000 is paid to his cohabiting partner Mary Smith because she is the surviving policy owner. Assuming Mary inherited no other assets, and Revenue agrees that she has paid 50% of the premiums, she will be taxed on 50% of the benefit.

- So, Mary's taxable inheritance is €50,000.
- Threshold €15,075 exempt.
- Balance €34,925 taxed at 33% = €11,525.

EXAMPLE 3

Mary Smith takes out a life policy with life cover of €100,000 on John Brown's life, i.e. Mary is the proposer / policy owner with John as the life assured. Mary pays the premiums by direct debit from her own bank account. John dies and the €100,000 is paid to his partner Mary Smith, as she is the legal owner of the policy.

Mary has no liability to inheritance tax, as she is both the beneficiary and the person who paid the premiums.

SMALL GIFTS EXEMPTION

The examples given assume both parties are in a position to contribute to the cost of the policy. Where one party is financially dependent on the other, then no matter how the policies are arranged, on the death of the person who financed the policy the survivor will take a taxable inheritance equal to the full value of the policy.

One way of avoiding the potential taxable inheritance for someone who does not have their own means of income would be to avail of the annual gift tax exemption of €3,000. For this to work, it is vital that the donor first gifts the €3,000 to the beneficiary, who then uses it to pay the premium on the life of another policy. A simple way of setting this up would be for the donor to set up a direct debit to the beneficiary's bank account, and then the beneficiary could effect the life of another policy and pay the €3,000 or part of the premium from his/her own bank account.

WHEN ADVISING COHABITING COUPLES

When putting in place 'mortgage protection' type cover, arranging the cover on a joint life first death basis may give rise to a potential tax liability. The sum assured could be increased to cover this potential liability. The amount of increased cover will depend on the percentage of the property inherited by the survivor and what, if any, contribution they have made to the mortgage.

When putting in place additional 'family protection' type cover, arranging the cover on a single life 'life of another' basis will avoid any potential liability to inheritance tax but only where the proposer actually pays the premium, i.e. the proposer must have independent financial means.

If the policy is effected on a dual life basis then the cover will need to be increased to take into account the potential tax liability. The amount of increased cover will again depend on the percentage inherited by the survivor and what, if any, contribution they have made to the policy.

Where a couple are planning to marry or register as civil partners in the near future, they may decide that it is more practical to have a jointly owned policy in the long term. So they may be happy to take the risk that in the (hopefully unlikely) event of death before they 'tie the knot' a tax liability may arise.

If a couple have other substantial assets it may be more prudent for them to either effect Section 72 cover on a single life basis nominating each other as the beneficiary of the policy, or alternatively each of them could effect a 'life of another' policy on the other to cover any potential tax liability.

SOME MORE USEFUL LINKS:

Capital Acquisitions Tax - An Advisers Guide

Passing on business assets

Capital Acquisitions Tax - A Customers Guide

Protection cover for co-habiting couples

Civil Partners and Cohabitants Life Assurance Issues

Saving for gift tax

Sample brokers estate planning factind

Tax efficient succession planning for your Approved Retirement Fund (ARF)

Business Relief from CAT

Using life assurance to fund for your gift and inheritance tax

Underwriting questionnaire:

Inheritance Tax Questionnaire

APPENDICES

APPENDIX I

1. Sample Personal Shareholder Legal Agreement
2. Personal Shareholder – Notes on Legal Agreement
3. Sample Personal Shareholder Trust Form

1. SAMPLE PERSONAL SHAREHOLDER LEGAL AGREEMENT

This agreement is made (date) between (names and addresses of shareholders).

WHEREAS:

A. The parties hereto are shareholders and directors in the company known as (name and address of company).

B. The parties hereto desire that on the death of any party hereto his personal representatives shall have the option to sell and the surviving parties hereto shall have the option to purchase the deceased party's shares on the terms hereinafter appearing.

C. The parties hereto desire to confirm that the said arrangements are reciprocal.

NOW THIS AGREEMENT WITNESSES as follows:

1) In consideration of the provisions of Clause 2 hereof on the death of any party hereto the surviving parties shall have the option to purchase the deceased's shares in the said company from the deceased's personal representatives such option to be exercised by notice in writing served within six months from the date of death and on the exercise of such option the deceased's personal representatives shall sell the share to the survivors on the terms hereinafter appearing.

2) In consideration of the provisions of Clause 1 hereof on the death of any party hereto the deceased's personal representatives shall have the option to sell the deceased's share in the said company to the surviving parties such option to be exercised by notice in writing served within six months from the date of death and on the exercise of such option the surviving parties shall purchase the share from the deceased's personal representatives on the terms hereinafter appearing.

3) The price shall (in default of agreement between the surviving parties hereto) be such price as may be determined on the occurrence of the death of any party hereto as the fair value thereof by the company's auditors for the time being in accordance with the company's Constitution.

4) If either option is exercised then (in default of agreement between the surviving parties hereto) the purchase of the deceased's share by the surviving parties hereto shall be made rateably according to their shareholdings immediately prior to the exercise of such option.

5) Each of the parties hereto hereby covenants with each of the other parties hereto that in consideration of his being named or described as a beneficiary on a policy of life assurance effected and maintained by each of the other parties with Irish Life Assurance plc, he (so long as the said policies are effected and maintained and he continues to be a shareholder in the said company) will himself effect and maintain a policy with Irish Life Assurance plc for the benefit of the other parties hereto.

6) Each of the parties hereto hereby irrevocably authorises the said company, in the event of his failing to pay any premium or premiums due on the said policy, to pay any amount outstanding in respect of such premiums by deduction from his remuneration or from any other sums due to him from the said company on receipt by the said company of a notice in writing from the other parties hereto furnishing details of a non-payment and requiring the said company to do so.

7) This agreement shall:

   a) bind the personal representatives of the parties hereto;

   b) cease to have effect on the winding up of the company otherwise than for the purpose of a reconstruction.

AS WITNESS the hands of the parties hereto the day and year first herein written.

Signature of Shareholder

Signature, address and occupation of Witness

Signature of Shareholder

Signature, address and occupation of Witness

Signature of Shareholder

Signature, address and occupation of Witness

Signature of Shareholder

Signature, address and occupation of Witness

Note:

The company's Constitution should be checked and should be amended if there is any conflict between it and the this draft agreement.

This is a specimen agreement; Irish Life Assurance plc cannot accept any responsibility for its suitability in any case. Consult your professional legal adviser.

2. PERSONAL SHAREHOLDER – NOTES ON LEGAL AGREEMENT
NOTES ON SAMPLE BUY/SELL DOUBLE OPTION AGREEMENT

Start

This agreement is made .... insert date of agreement and names and addresses of shareholders.

Whereas

This section sets out the main terms of the agreement.

a) The people involved in the agreement are shareholders and directors in the company known as .... insert name and address of company.

b) The agreement is basically a buy/sell agreement between the surviving shareholders and the deceased shareholder's personal representatives. However, the double option feature gives both sides the option to not sell / purchase as long as both sides are agreeable.

c) The arrangement is a reciprocal one. This means that all parties / each shareholder will effect and maintain a life assurance plan for the benefit of the other shareholders.

Section 1

This section gives the surviving shareholders the option to exercise in writing, within six months from the date of death of a shareholder, the option to buy the shares of the deceased from his/her personal representatives. If this option is exercised the deceased's personal representatives are compelled to sell the shares.

Section 2

This section gives the deceased shareholder's personal representatives the option to exercise in writing, within six months from the date of death, the option to sell the shares of the deceased to the surviving shareholders. If this option is exercised the surviving partners are compelled to purchase the shares.

Section 3

This section deals with the price at which the shares are to be bought by the surviving shareholders. In order that a fair and realistic price is given the company's auditors, in accordance with the company's Constitution, will agree the price.

Section 4

This section states that if either option is exercised, then the surviving shareholders will purchase the shareholding at the valued rate immediately prior to the date the buy/sell option is exercised.

Section 5

This section states that any shareholder that is to benefit from this arrangement will effect and maintain a life assurance plan with Irish Life Assurance plc for the benefit of the other shareholders so long as they continue to be a shareholder.

Section 6

This section covers the area of non-payment of premium by the shareholder that is covered under the life assurance plan. The clause gives the company the right to deduct the cost of the premium from the remuneration or monies due to the shareholder covered to pay outstanding premiums due on receipt of notice of non-payment.

Section 7

This section contains some terms of the agreement:

a) The deceased shareholder's personal representatives are bound by this agreement.

b) The agreement will no longer be valid if the company winds up other than for reconstruction purposes.

As Witness

All shareholders must sign individually and their signature must be witnessed.

Note:

Where share purchase cover is being put in place on a personal basis, it is very important that the client's own legal adviser should be consulted on the suitability of these draft agreements for the client's particular circumstances.

This is a specimen agreement. Irish Life Assurance plc cannot accept any responsibility for its suitability in any case. Consult your professional adviser.

3. SAMPLE PERSONAL SHAREHOLDER TRUST FORM

Shareholder Trust

Declaration of Trust

1) I (shareholders name)_____________________________of (address)____have submitted a proposal dated (date of proposal)_/_ /_ to Irish Life Insurance Assurance plc seeking a policy of assurance on my life. In this document I refer to myself as the "Settlor", Irish Life Insurance Assurance plc as the "Company" and the policy of assurance as the "Policy". The Policy, its proceeds and any benefits which may accrue under it or assets representing it are called the "Trust Fund".

2) I hereby request and authorise the Company to issue the Policy to me as trustee upon the trusts set out in this Declaration. The expression "Trustees" means the trustee or the trustees for the time being under this Declaration.

3) If the benefit under the Policy shall become payable in consequence of my death, permanent and total disability or a diagnosis that I am suffering from a critical illness (as defined in the Policy conditions), the Trustees shall hold the Trust Fund upon trust for the benefit of all or such one or more of

   (a) the shareholders for the time being of (name of company) having its registered office at (address of company) and,

   (b) my spouse (if any), all my children and remoter issue who are now living or shall hereafter be born during my lifetime and my parents, brothers, sisters, uncles, aunts, nephews and nieces who are now living or shall hereafter be born during my lifetime (hereinafter together referred to as "the Beneficiaries") in such shares and subject to such conditions as the Trustees in their absolute discretion shall revocably or irrevocably appoint by deed.

   (c) However (i) paragraph (b) above shall not apply and the persons referred to in that paragraph shall not be Beneficiaries unless, prior to my death, I shall have ceased to be a shareholder in the above mentioned Company or its shareholders for the time being shall give their consent in writing (which consent shall be deemed to be irrevocable and the consent of any person who may become a shareholder after the giving of that consent shall not be required),

   (ii) no appointment shall be made nor any power of revocation exercised after my death,

   (iii) no appointment or revocation by which any Beneficiary may benefit may be made by that Beneficiary acting as sole Trustee, and

   (iv) the Trustees may at any time or times by deed wholly or partially release or restrict the future exercise of this power of appointment. In default of and subject to any such appointment, the Trust Fund shall be held for the absolute benefit of such of the Beneficiaries as survive me in the proportionate shares in which they are entitled to the capital and goodwill of the Company at the date of my death.

4) If the benefit under the Policy shall become payable otherwise than in consequence of my death, permanent and total disability or critical illness (as defined in the Policy conditions) then the Trustee shall hold the Trust Fund upon trust for my absolute benefit.

5) As Settlor, I shall have the power by deed during my life to appoint a new or additional Trustee or Trustees and shall also have power by deed to remove any Trustee. The power of appointing a new Trustee or Trustees after my death in any case where there is no Trustee able and willing to act as such is vested in (insert name and address of person who has power to appoint a Trustee after the settlor's death) provided that, as Settlor, I may at any time or times by notice in writing to the Company vest the said power of appointing a new Trustee or Trustees in any person or persons in substitution for the person or persons in whom it has previously been vested.

6) Neither I as Settlor nor the Trustees shall have any right to reimbursement of any sum paid or provided as a premium on the Policy unless such right is reserved by written agreement on or before the date of such payment or provision.

7) In addition to the general powers of Trustees conferred by law the Trustees shall have the following powers:

   (a) to exercise any power, election or option available under the Policy or otherwise as if the Trustees were the absolute beneficial owners of the Policy;

   (b) to enter into any agreement with me, the Settlor, or any other person for the provision of loans for the payment of premiums on the Policy or any other policy held or effected by the Trustees as part of the Trust Fund;

   (c) to invest the Trust Fund in assets including life assurance policies and annuities as if the Trustees were the absolute beneficial owners of the Trust Fund and to make loans with or without interest to beneficiaries or to persons accountable for payment of tax on property in which such beneficiaries may have a beneficial interest;

   (d) to pay to or apply for the maintenance, education or benefit of any minor beneficiary or of any other beneficiary who is under disability and unable to give a good receipt, all or part of the capital or income of the share of the Trust Fund to which that beneficiary is absolutely contingently or defeasibly entitled or accumulate such income or the remainder of the income with the capital of such share, as the Trustees may think fit;

   (e) in any case where a payment of income or capital is made to or for the benefit of a minor beneficiary or to or for the benefit of any other beneficiary who is under disability and unable to give a good receipt, to accept as a good and sufficient discharge the receipt of any parent or guardian of the beneficiary or of any person with whom the beneficiary resides or under whose care and control the beneficiary is or appears to be without being required to supervise the application of the said sum by such guardian or other person.

8) Any Trustee (other than me, or any spouse I may have) being a person or Company in any profession or business shall be entitled to be paid all usual professional or business charges for work done by him (or by any employee or partner of his) or it in connection with the trusts hereof including acts which a Trustee not being in any profession or business could have done personally.

Date: ____ /____ /__ __ ____

Signature of Settlor: ____

Signature of Witness: ____

Note:

Where share purchase cover is being put in place on a personal basis, it is very important that the client's own legal adviser should be consulted on the suitability of these draft trust forms for the client's particular circumstances.

This is a specimen agreement. Irish Life Assurance plc cannot accept any responsibility for its suitability in any case. Consult your professional adviser.

APPENDIX II

IMPORTANT

This is purely a sample agreement and should not be used as it stands.

There may be a possible conflict between the option agreement and any existing pre – emption rights in the company's constitution.

In such circumstances it may be desirable to include an additional clause in the option agreement stating that the agreement supersedes any pre – exemption rights in the constitution.

A company should draft its own agreement in conjunction with its own legal & taxation advisers.

SECTION 1 - This is the definition section, defining terms that are used throughout the agreement.

SECTION 2 -This makes the Agreement conditional on the company effecting and maintaining a life assurance policy on the life of the shareholder for the purpose of buying back that shareholder's shares on death.

The purpose of this Section is to prevent a situation arising where the company could be compelled under the Agreement to buy back its shares from a deceased shareholder where the company had no life cover in place on that shareholder and hence had no liquid funds to complete the purchase.

SECTION 3 -This clause is self-explanatory and emphasises the point that the Agreement can only be performed insofar as such performance complies with the provisions of Part 3, Chapter 6 of the Companies Act 2014.

SECTION 4 -This Section outlines the nature and extent of the Put and Call Options and states that the options shall arise on the occurrence of the Specified Event, i.e. death. These options are always subject to the provisions of Part 3, Chapter 6 of the Companies Act 2014. Clause 4.1.3 also states that the company can only purchase its shares under the options only to the extent which it can purchase the shares out of Profits Available for Distribution, or otherwise in accordance with the Companies Act 2014.

SECTION 5 -This Section outlines the procedures for the exercise of the Put and Call Options following the death of the shareholder. The company's Call option lapses after three months from the death of the shareholder. The Vendor's Put option lapses after six months from the death of the shareholder.

SECTION 6 -This section specifies the procedure for calculating the purchase price of the shares to be bought back on death. Clause 6.1 simply says that the purchase price shall be based on the market value of the shares on the last day before the death of the shareholder. The purchase price shall in no way be affected by the receipt by the company of the proceeds of the life policy.

SECTION 7 -This section contains some general clauses. Clause 7.3 provides a procedure for determining which of the two shareholders died first in circumstances where they die simultaneously, e.g. in a plane crash. This might be relevant if both shareholders were the subject of separate Put and Call Option agreements and it was uncertain which buy back should occur first.

This agreement is made the   /   /

between (Mr X of)

(the "Vendor" which expression shall include his executors and administrators) of the one part and (Y Limited)

having its registered office at

(the "Company" which expression shall include it's successors) of the other part.

Note: *Every effort has been made to ensure that the information in this publication is accurate at the time of going to press. Irish Life Assurance plc accepts no responsibility for any liability incurred or loss suffered as a consequence of relying on any matter published in or omitted from this publication.*

WHEREAS:

A. The company is a private company limited by shares / designated activity company incorporated in the Republic of Ireland on the

/ / [and it has an authorised share capital of shares

of which are issued and fully paid up in cash].

B. The vendor is a shareholder of the company.

NOW IT IS HEREBY AGREED by and between the parties hereto as follows:

SECTION 1 – DEFINITIONS

1.1 In this Agreement, unless the context otherwise requires, the following words and expressions shall have the meanings appearing opposite.

"the Call Option"	The option granted to the Company pursuant to Clause 4.1.1.
"the Companies Act"	The Companies Act 2014.
"the Insurance Company"	
"the Insurance Policy"	The policy of life assurance effected by the Company on the life of the Vendor or on the joint lives of the Vendor and any other shareholder of the Company, or any policy issued in substitution or in lieu of such policy, for the purpose of enabling the Company to purchase the shares from the Vendor or his personal representative or beneficiaries in accordance with this Agreement.
"other Shareholders"	Shareholders of the Company other than the Vendor.
"Chapter 6"	Part 3, Chapter 6 of the Companies Act 2014.
"the Purchase Price"	The price of the share calculated in accordance with Section 6 hereof.
"the Put Option"	The Option granted to the Vendor pursuant to Clause 4.1.2.
"the Shares"	Any or all of the shares held by the Vendor in the Capital of the Company at the date of the occurrence of the Specified Event.
"the Specified Event"	The death of Mr. X.

SECTION 2 – CONDITIONS

2.1 This Agreement shall be conditional upon the Company having entered or entering into the Insurance Policy within days of the execution of this Agreement and shall be further conditional upon the continuing payment by the Company to the Insurance Company at the times specified in the Insurance Policy of all the premiums and other sums required in order to keep the insurance policy effective.

2.2 Failure to comply with Clause 2.1 shall render this Agreement null and void.

SECTION 3 – PART XI

3. It shall be a fundamental term of this Agreement that any obligations assumed by the company under this Agreement shall at all times be subject to the provisions of Chapter 6 and shall not be construed to require the Company to do anything in breach of any of the provisions of Chapter 6, or any of the provisions of the Companies Act 2014.

SECTION 4 – PUT AND CALL OPTION

4.1 Subject to the provisions of Chapter 6 and Section 5, on the occurrence of the Specified Event:

4.1.1 The company shall be entitled to purchase the Shares from the Vendor at the Purchase Price;

and

4.1.2 The Vendor shall be entitled to require the Company to purchase the Shares from the Vendor at the Purchase Price.

4.1.3 The company may purchase the Shares only to the extent to which it can purchase the shares out of Profits Available for Distribution or to the extent to which it can otherwise purchase the Shares in accordance with the provisions of Chapter 6, and the provisions of the Companies Act 2014.

SECTION 5 – EXERCISE OF THE OPTION

5.1 The Call Option shall be deemed to be exercised forthwith upon the giving of notice in writing by the Company to the Vendor within three months from the occurrence of the Specified Event. The Put Option shall be deemed to be exercised forthwith upon the giving of notice in writing by the Vendor to the Company within six months of the occurrence of the Specified Event:

5.2 A notice in writing in accordance with the provisions of Clause 5.1 having been given by the Company or (as the case may be) by the Vendor, the Company pay to the Vendor by way of bankers draft the Purchase Price and in return for the payment therefore the Vendor shall furnish to the company the share certificates in respect of the Shares and do all other acts necessary in order to pass title in the Shares, free from all liens, charges and encumbrances to the company.

SECTION 6 – EXERCISE OF THE OPTION

6.1 Upon exercise of the Put Option or the Call Option the Purchase Price shall be determined by the auditors of the Company based on the market value of the Shares on the day immediately preceding the occurrence of the Specified Event, and shall not take account of any increase in the share price or asset value of the Company which might otherwise occur by virtue of receipt of the proceeds of the Insurance Policy. The determination by the auditors of the Purchase Price shall be final and binding. The auditors will act in this regard as experts and not as arbitrators and the provisions of the Arbitration Acts will not apply.

SECTION 7 – GENERAL

7.1 Any notice required to be given hereunder shall be in writing and shall be delivered by hand or sent by prepaid post to the party to whom such notice is to be given at its address as set out herein (or such other address as such party may have notified in writing from time to time as its address for the purposes of notices hereunder) and if delivered by hand shall be deemed to have been received upon delivery, and if sent by post, shall be deemed to have been received forty eight hours after posting.

7.2 The captions in this Agreement are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

7.3 In the event of the deaths of two shareholders in the Company occurring simultaneously the oldest shareholder will be deemed, for the purpose of this Agreement, to have died first.

7.4 This Agreement is personal to the Company and the Vendor and shall not be assigned by either of them.

7.5 This Agreement may be rescinded by the passing of a Special Resolution by the Company in accordance with Section 107 of the Companies Act.

7.6 This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of Ireland.

7.7 If any term or provision of the Agreement shall be held to be illegal or unenforceable in whole or in part under any enactment or rule of law such term or provision shall to that extent be deemed not to form a part of this Agreement and the enforceability of the remainder hereof shall not be affected.

CONTACT US

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Irish Life Assurance plc is regulated by the Central Bank of Ireland.
Irish Life Assurance plc, Registered in Ireland number 152576, Vat number 9F55923G.

LAS (10/15)

APPENDIX III

1. Sample Partnership Insurance Legal Agreement
2. Sample Partnership Insurance Trust Form

1. SAMPLE PARTNERSHIP INSURANCE LEGAL AGREEMENT PARTNERSHIP DOUBLE OPTION AGREEMENT

This agreement is made (date)____

between (names and addresses of partners)__________________________________

WHEREAS:

A. The parties hereto are partners in the Firm known as (name and address of Firm)

B. The parties hereto desire that on the death of any party hereto his personal representatives shall have the option to sell and the surviving parties hereto shall have the option to purchase the deceased party's share in the said firm on the terms hereinafter appearing.

C. The parties hereto desire to confirm that the said arrangements are reciprocal.

NOW THIS AGREEMENT WITNESSES as follows:

1. In consideration of the provisions of Clause 2 hereof on the death of any party hereto the surviving parties shall have the option to purchase the deceased's shares in the said Firm from the deceased's personal representatives such option to be exercised by notice in writing served within six months from the date of death and on the exercise of such option the deceased's personal representatives shall sell the share to the survivors on the terms hereinafter appearing.
2. In consideration of the provisions of Clause 1 hereof on the death of any party hereto the deceased's personal representatives shall have the option to sell the deceased's share in the said Firm to the surviving parties such option to be exercised by notice in writing served within six months from the date of death and on the exercise of such option the surviving parties shall purchase the share from the deceased's personal representatives on the terms hereinafter appearing.
3. The price shall (in default of agreement between the surviving parties hereto) be such price as may be determined on the occurrence of the death of any party hereto as the fair value thereof by the Firm's Auditors for the time being in accordance with the Partnership Agreement.
4. If either option is exercised then (in default of agreement between the surviving parties hereto) the purchase of the deceased's share by the surviving parties hereto shall be made rateably according to their share in the Firm immediately prior to the exercise of such option.
5. Each of the parties hereto hereby covenants with each of the other parties hereto that in consideration of his being named or described as a beneficiary on a policy of life assurance effected and maintained by each of the other parties with Any Insurance Assurance plc, he (so long as the said policies are effected and maintained and he continues to be a partner in the said Firm) will himself effect and maintain a policy with Any Insurance Assurance plc for the benefit of the other parties hereto.
6. Each of the parties hereto hereby irrevocably authorises the said Firm, in the event of his failing to pay any premium or premiums due on the said policy, to pay any amount outstanding in respect of such premiums by deduction from his remuneration or from any other sums due to him from the said Firm on receipt by the said Firm of a notice in writing from the other parties hereto furnishing details of a non-payment and requiring the said Firm to do so.
7. This agreement shall:

   a) bind the personal representatives of the parties hereto;

   b) cease to have effect on the dissolution of the firm.

AS WITNESS the hands of the parties hereto the day and year first herein written.

Signature of Partner____

Signature, address and occupation of Witness _______________________________________

Signature of Partner____

Signature, address and occupation of Witness _______________________________________

Signature of Partner____

Signature, address and occupation of Witness _______________________________________

Signature of Partner____

Signature, address and occupation of Witness _______________________________________

Note:

Where partnership cover is being put in place, it is very important that the client's own legal adviser should be consulted on the suitability of these draft forms for the client's particular circumstances.

This is a specimen agreement; Irish Life Assurance plc cannot accept any responsibility for its suitability in any case. Consult your professional adviser.

2. SAMPLE PARTNERSHIP INSURANCE TRUST FORM
PARTNERS TRUST

Declaration of Trust

1. I (partners name)____of
(address)____

   have submitted a proposal dated (date of proposal)______________to Any Insurance Assurance plc seeking a policy of assurance on my life. In this document I refer to myself as the "Settlor", Irish Life Assurance plc as the "Company" and the policy of assurance as the "Policy". The Policy, its proceeds and any benefits which may accrue under it or assets representing it are called the "Trust Fund".

2. I hereby request and authorise the Company to issue the Policy to me as trustee upon the trusts set out in this Declaration. The expression "Trustees" means the trustee or the trustees for the time being under this Declaration.

3. If the benefit under the Policy shall become payable in consequence of my death, permanent and total disability or a diagnosis that I am suffering from a critical illness (as defined in the Policy conditions), the Trustees shall hold the Trust Fund upon trust for the benefit of all or such one or more of

   (a) the partners for the time being of the firm known as (name of firm)________________________ carrying on business at (address of firm) ____and their successors in business, and,

   (b) my spouse (if any), all my children and remoter issue who are now living or shall hereafter be born during my lifetime and my parents, brothers, sisters, uncles, aunts, nephews and nieces who are now living or shall hereafter be born during my lifetime (hereinafter together referred to as "the Beneficiaries") in such shares and subject to such conditions as the Trustees in their absolute discretion shall revocably or irrevocably appoint by deed.

   However

   (i) paragraph (b) above shall not apply and the persons referred to in that paragraph shall not be Beneficiaries unless, prior to my death, I shall have ceased to be a partner in the above mentioned firm or its partners for the time being shall give their consent in writing (which consent shall be deemed to be irrevocable and the consent of any person who may become a partner after the giving of that consent shall not be required),

   (ii) no appointment shall be made nor any power of revocation exercised after my death,

   (iii) no appointment or revocation by which any Beneficiary may benefit may be made by that

   Beneficiary acting as sole Trustee, and

   (iv) the Trustees may at any time or times by deed wholly or partially release or restrict the future exercise of this power of appointment.

   In default of and subject to any such appointment, the Trust Fund shall be held for the absolute benefit of such of the Beneficiaries as survive me in the proportionate shares in which they are entitled to the capital and goodwill of the firm at the date of my death.

4. If the benefit under the Policy shall become payable otherwise than in consequence of my death, permanent and total disability or critical illness (as defined in the Policy conditions) then the Trustee shall hold the Trust Fund upon trust for my absolute benefit.

5. As Settlor, I shall have the power by deed during my life to appoint a new or additional Trustee or Trustees and shall also have power by deed to remove any Trustee. The power of appointing a new Trustee or Trustees after my death in any case where there is no Trustee able and willing to act as such is vested in (insert name and address of person who has power to appoint a Trustee after settlor's death) _____ ____ provided that, as Settlor, I may at any time or times by notice in writing to the Company vest the said power of appointing a new Trustee or Trustees in any person or persons in substitution for the person or persons in whom it has previously been vested.

6. Neither I as Settlor nor the Trustees shall have any right to reimbursement of any sum paid or provided as a premium on the Policy unless such right is reserved by written agreement on or before the date of such payment or provision.

7. In addition to the general powers of Trustees conferred by law the Trustees shall have the following powers:

   (a) to exercise any power, election or option available under the Policy or otherwise as if the Trustees were the absolute beneficial owners of the Policy;

   (b) to enter into any agreement with me, the Settlor, or any other person for the provision of loans for the payment of premiums on the Policy or any other policy held or effected by the Trustees as part of the Trust Fund;

   (c) to invest the Trust Fund in assets including life assurance policies and annuities as if the Trustees were the absolute beneficial owners of the Trust Fund and to make loans with or without interest to beneficiaries or to persons accountable for payment of tax on property in which such beneficiaries may have a beneficial interest;

   (d) to pay to or apply for the maintenance, education or benefit of any minor beneficiary or of any other beneficiary who is under disability and unable to give a good receipt all or part of the capital or income of the share of the Trust Fund to which that beneficiary is absolutely contingently or defeasibly entitled or accumulate such income or the remainder of the income with the capital of such share, as the Trustees may think fit;

   (e) in any case where a payment of income or capital is made to or for the benefit of a minor beneficiary or to or for the benefit of any other beneficiary who is under disability and unable to give a good receipt, to accept as a good and sufficient discharge the receipt of any parent or guardian of the beneficiary or of any person with whom the beneficiary resides or under whose care and control the beneficiary is or appears to be without being required to supervise the application of the said sum by such guardian or other person.

8. Any Trustee (other than me, or any spouse I may have) being a person or Company in any profession or business shall be entitled to be paid all usual professional or business charges for work done by him (or by any employee or partner of his) or it in connection with the trusts hereof including acts which a trustee not being in any profession or business could have done personally.

Date: ____ /____ /__ __ ____

Signature of Settlor: ____

Signature of Witness: ____

Note:

Where partnership cover is being put in place, it is very important that the client's own legal adviser should be consulted on the suitability of these draft forms for the client's particular circumstances.

This is a specimen agreement. Irish Life Assurance plc cannot accept any responsibility for its suitability in any case. Consult your professional adviser.

PENSIONS
INVESTMENTS
LIFE INSURANCE

Irish Life

CONTACT US

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